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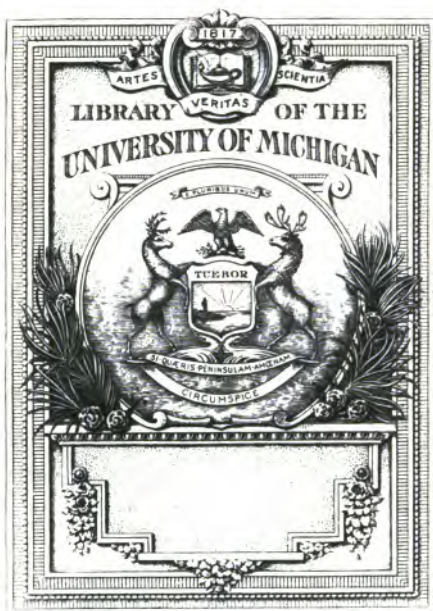
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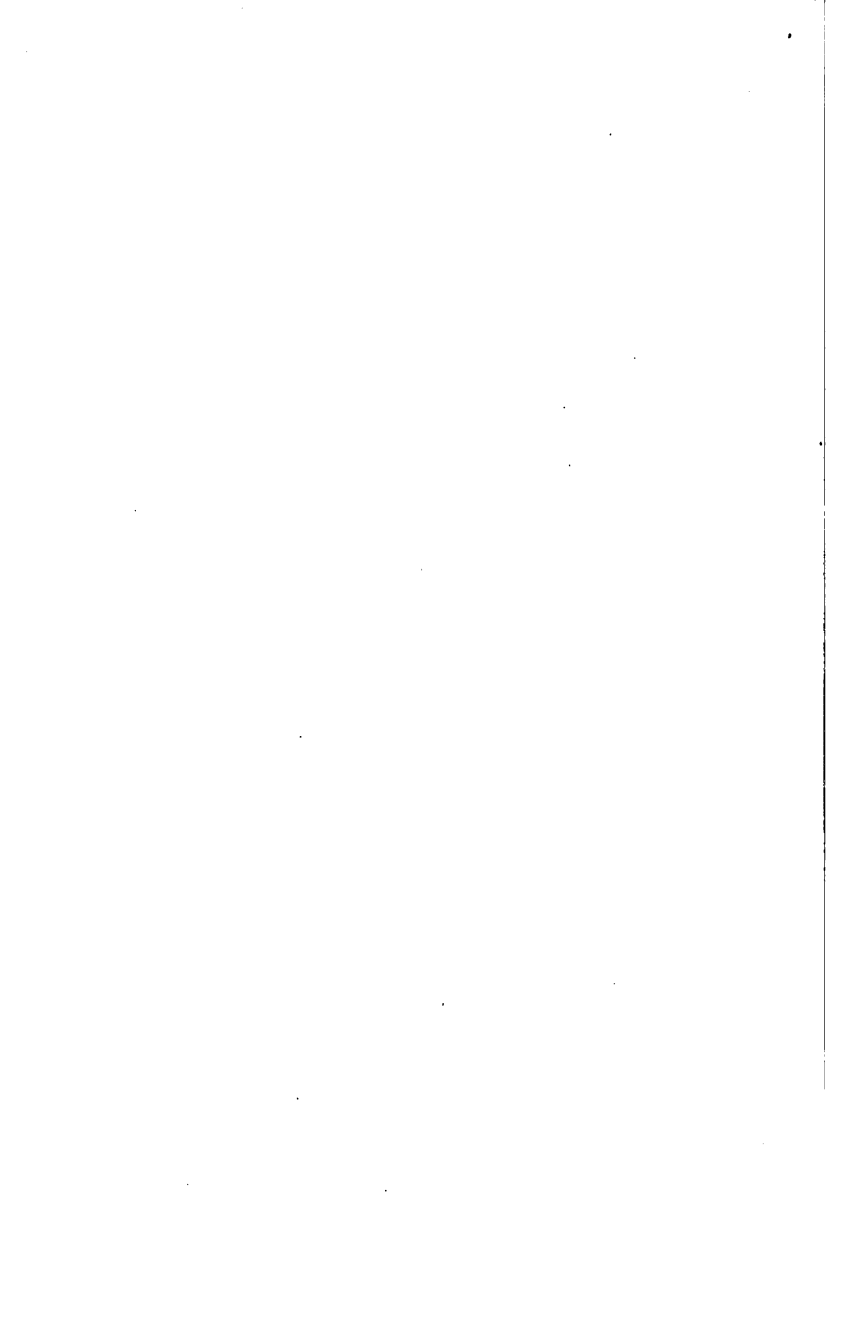
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# **Government and Politics of Switzerland**



**GOVERNMENT HANDBOOKS** is a new series of college textbooks in government prepared under the joint editorship of David Prescott Barrows, Ph.D., Professor of Political Science (on leave) and formerly Dean of the Faculties in the University of California, now Colonel in the United States Army, and Thomas Harrison Reed, A.B., LL.B., Associate Professor of Government in the University of California and City Manager of San Jose, California.

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Edited by DAVID P. BARROWS and THOMAS H. REED  
**Government Handbooks**

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# Government and Politics of Switzerland

BY  
*Clarkson*  
**ROBERT C. BROOKS**  
JOSEPH WHARTON PROFESSOR OF POLITICAL  
SCIENCE, SWARTHMORE COLLEGE



YONKERS-ON-HUDSON : : : NEW YORK  
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1918

**"This house is a visible emblem of the friendship between Switzerland and the United States, a friendship that rests upon common principles of life, common ideals, and common aspirations."**

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## EDITORS' INTRODUCTION

**T**HERE are several reasons which make a new book on the Swiss federal republic extremely timely in this year of the greatest crisis of the great war. Placed in the geographical center of an unprecedented conflict, Switzerland has to date maintained an irreproachable neutrality. During four years which have made waste paper of the legal and diplomatic formalities of a century, Switzerland still holds to the validity of every treaty and convention to which she is an adherent. Almost alone of the civilized countries she continues to practice those principles of consideration and humanity whose advocacy has lifted her historic town of Geneva into a position of light and leading for the whole world.

Nor can any one claim that the smallness of Switzerland's numbers or resources has made her a victim of aggression or intimidation. Whether her integrity be due to the prudence and consideration of her battling neighbors, or to the spirit and martial discipline of her own people, the fact stands.

Her example may help to the solution of some of the most difficult of the issues of the war.

It has been authoritatively stated that this war is

[v]

## EDITORS' INTRODUCTION

*for the establishment of the rights of small nations—the right of peoples to “self-determination.” But what are the small nations whose rights are thus to be established? Are such nations to be defined in terms of German national philosophy, which emphasizes homogeneity in blood and language as alone conferring the right both to add to and to take away, to aggrandize and to dismember? Poles and Serbs have long contended for this right. Shall equal consideration be accorded to Livonians, to Ukrainians, to Irish, and to Finns? Has every local community conscious of its particularism the right to separate itself from empire or federation? Will the moral justification of the Civil War in America be impaired by the triumph of the cause for which America is now fighting?*

*Switzerland, with her population composed of three of the main European folks, her people speaking four languages and professing two forms of Christian faith, yet holds tightly to her national solidarity. Her example may help us to a wise analysis of the problem.*

*Furthermore, Switzerland is of ever present interest by reason of her democracy. To war to make the world safe for democracy is a noble conception, but it demands analysis. How is democracy to be conceived, and what form of democracy is America championing? It can scarcely be denied that the faith of the Bolsheviks*

## EDITORS' INTRODUCTION

*is democracy — perhaps the most thoroughgoing democracy that the world has ever seen attempted on a large scale. So are the radical reforms of the Carranzistas of Mexico. Are we fighting to make safe their place in the world? Switzerland, whose conservative democracy by contrast seems to place it in a different category of political experiment, should help us to clear thinking on this greatest of themes. There is still a further reason why Swiss government must possess unusual interest to Americans, and that is the fact of our extensive imitation of its inventions. Our period of political creativeness gave to the world an astonishing series of new institutions, — federalism, written constitutions, the Senate, a Supreme Court, a guaranteed field of civil liberty, presidential government, and universal manhood suffrage. These among other triumphs belong to the first years of our national history. For a hundred years now we have been borrowers, not originators, in government. The original system has remained in theory unaltered. Where corrective devices were necessary, we have in the main lifted them from the statute books of foreign countries, — our civil-service reform laws from Great Britain, our ballot system from Australia, proportional representation from Belgium, and from Switzerland the initiative and referendum. Switzerland is a laboratory of adventurous experiment in govern-*



## EDITORS' INTRODUCTION

*ment, and her successes contribute to the instruction of all republican peoples.*

*Professor Brooks has written this useful and welcome addition to the Government Handbook Series under the disadvantages of war-time conditions, but also under the stimulus of an active participation in the problems of the war and of democracy, and with the invaluable advantages of intimate assistance from Swiss statesmen facing the problems of their country amidst the great testing which government, the world over, undergoes as war continues.*

THE EDITORS

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## AUTHOR'S PREFACE

**T**HE aim of this volume is to describe the organization and functioning of the government and political parties of Switzerland. Historical origins and development are discussed, it is true, but only in a summary way. In the main the author has directed attention to modern instances and recent illustrations, endeavoring thus to present his subject as it really is; namely, a small but very successful "going concern" in the line of democratic government.

Although designed primarily as a textbook, it is hoped that the volume may have an appeal outside academic circles, — among writers, editors, statesmen, men of affairs, and others who are interested in civic problems and their solution along popular and progressive lines. The author freely confesses that "a man's other country" in his case has always meant Switzerland, chiefly because of its thoroughgoing and efficient application of the principles of democracy. Frequently in the last 130 years American political experience has quickened Swiss political life, and quite as frequently Swiss political experimenting has quickened American political development. No doubt this reciprocal influence will continue throughout ages yet to come, to

## AUTHOR'S PREFACE

the betterment both of the little republic of the Alps and her mighty sister overseas. If this volume contributes ever so slightly to that process of mutual democratic fertilization, it will have attained its higher purpose.

To the editors of this series of Government Handbooks — Major D. P. Barrows, now stationed at Manila, P. I., and City Manager T. H. Reed of San José, California, both of whom were formerly professors in the Department of Political Science at the University of California — the author wishes to extend his grateful acknowledgment for constant helpful assistance and much sound criticism.

One of the most delightful experiences in connection with the preparation of this book has been the widening which it brought about in the writer's circle of Swiss friends. Every citizen or former citizen of Switzerland to whom appeal was made for information responded with a generosity as warm as their love for the little country that gave them birth. Among these many kindly collaborators the author feels especially indebted to Professor William E. Rappard of the University of Geneva, whose extensive writings and recent public service as a member of the Swiss Commission to this country form a very substantial bond of understanding and amity between Switzerland and the United States. To his wise counsel much that is of value in the chapters on Swiss political

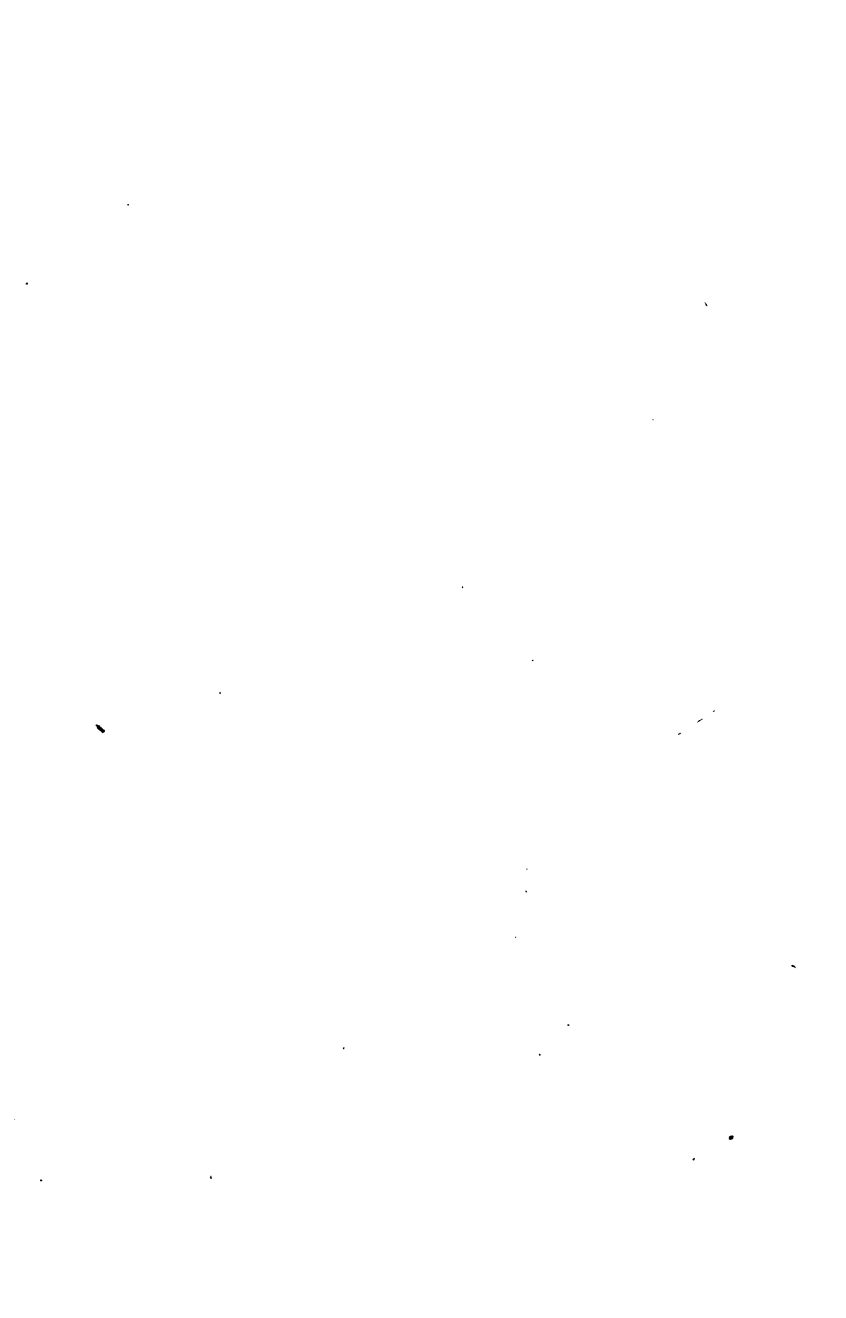
## AUTHOR'S PREFACE

parties and foreign relations must be attributed. Thanks are also due to Professor Fritz Fleiner of the University of Zürich for assistance in preparing the critical bibliography which completes the volume. At the Swiss Embassy in Washington, His Excellency, Dr. Hans Sulzer, Envoy Extraordinary and Minister Plenipotentiary, and Dr. Charles P. Hübscher, Secretary of Legation, proved themselves ever ready sources of accurate information. Mr. F. Dossenbach, General Manager of the Official Agency of the Swiss Federal Railroads in New York City, kindly read the manuscript of the chapter on "Communication and Transportation: National Ownership and Operation of Railways," supplying much additional material thereon. To his generosity also are due the most of the illustrations used in the volume.

Finally, the author's indebtedness is particularly great to two Swiss friends and neighbors, the Reverend Carl Vuilleumier, Swiss Consul at Philadelphia, and Professor Emil Schoch, formerly of the Swarthmore Preparatory School, now of the Blake School, Minneapolis. Upon the wide knowledge of these gentlemen he drew constantly and never in vain during the three years that the book has been under preparation.

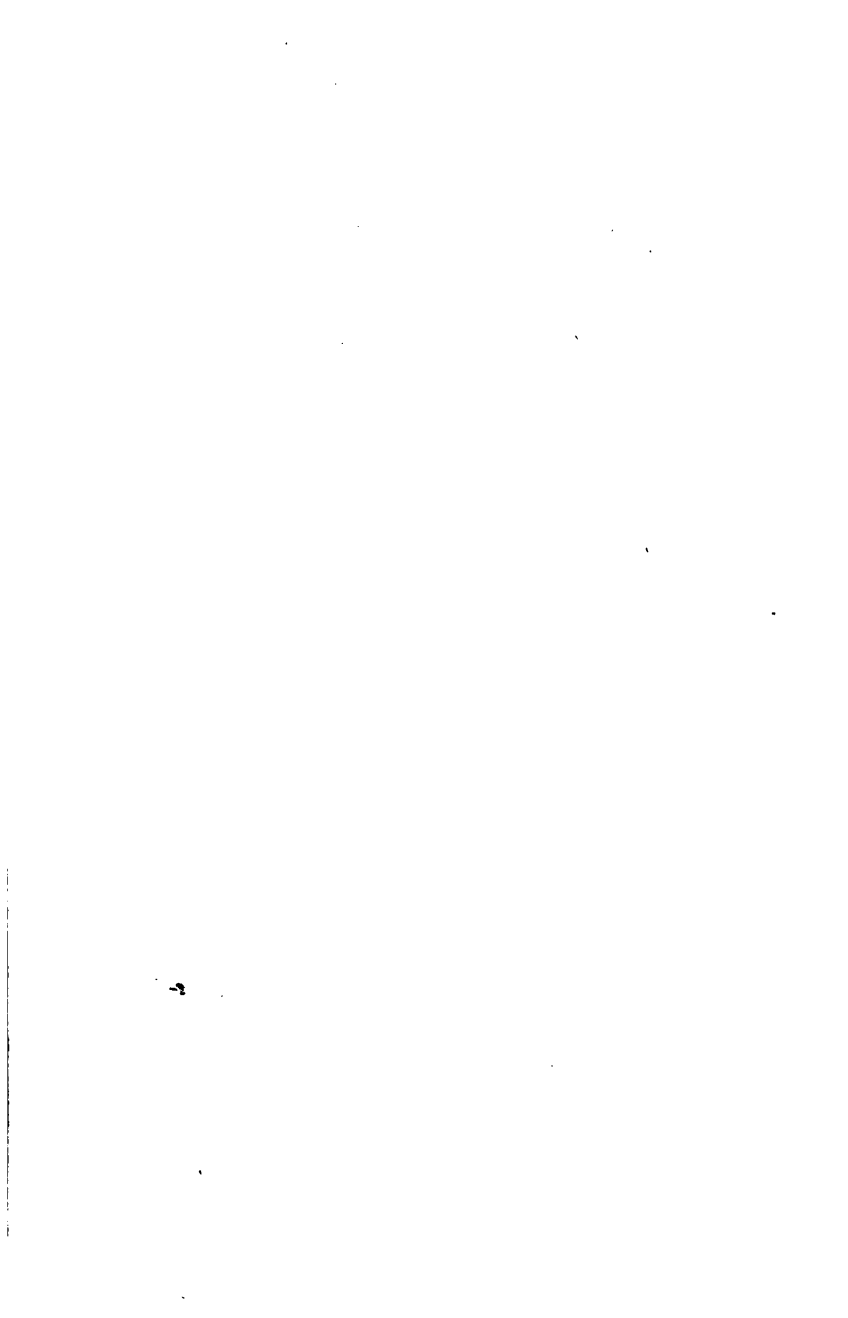
ROBERT C. BROOKS

SWARTHMORE, PENNSYLVANIA



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# Government and Politics of Switzerland

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## CHAPTER I

### PHYSICAL BASIS OF THE SWISS FEDERATION: LAND, PEOPLE, INDUSTRIAL AND SOCIAL CON- DITIONS

**S**WITZERLAND lies in the mountainous Location  
heart of southwestern Europe. Germany  
is her neighbor to the north, Austria and  
the diminutive principality of Liechtenstein to  
the east, Italy to the south, and France to the  
west. ~~Besides Serbia~~, Switzerland is the only  
considerable European state without direct ac-  
cess to salt water. From the ports on the North  
Sea or the English Channel her industrial cities  
are distant 350 miles. The Mediterranean and  
the Adriatic are much nearer, but the nature  
of the intervening country is such that it offers  
great difficulties to transportation.

In outline the boundaries of Switzerland form Area  
a rough quadrilateral. From east to west the  
greatest length of the country is 226½ miles; from  
north to south the greatest width is 137 miles.  
The area of Switzerland is 15,976 square miles.

## GOVERNMENT OF SWITZERLAND

Italy, the smallest of the four adjacent powers, is nearly seven times as large. France and Germany each have an area thirteen times, and Austria-Hungary an area fifteen times, that of the little Alpine republic. Compared with American states of familiar dimensions, Switzerland is one third the size of New York and twice that of Massachusetts.

The lowest point in Swiss territory is 646 feet above sea level. Her highest peaks tower to an altitude of 15,000 feet. Only 2 per cent of the area of the country is below 1000 feet in elevation, 58 per cent is between 1000 and 4000, and 34 per cent is over 4000 feet high. Lakes, glaciers, and perpetual snow fields cover over 6 per cent of the surface. Nearly a quarter of the territory is put down as unproductive by ordinary economic processes.<sup>1</sup>

Switzerland falls naturally into three great divisions: first, the region of the Alps, which with their ramifications cover the whole central, southern, and eastern sections of the country; second the Jura district, the lesser ranges of which are merely outlying spurs of the Alps; and third, the plateau or basin which lies between these two mountainous divisions.

### I. The Alps

With their giant and tortuous convolutions the Alps occupy nearly three fifths of the territory of Switzerland. Narrow river valleys pierce

<sup>1</sup> According to the "Statistisches Jahrbuch der Schweiz," 1916, p. 5, exactly 22.4 per cent of the soil is unproductive.

## PHYSICAL BASIS OF THE FEDERATION

deeply into the central mountain mass, the largest being those of the Rhine in the east and the Rhone in the west. Between these flow the Reuss, the Aar, and smaller streams, and in the south there are the Ticino and the Toce, the valleys of all of which converge like the ribs of a Titanic fan about the mighty massif of the Gotthard. Several of the most picturesque lakes in the world emerge from the northern foothills of the Alpine region, and others even more beautiful lie enfolded by the lower mountain slopes on the Italian side.

The limestone chain of the Jura extends from southeast to northwest along the French boundary of Switzerland. Its highest summit, Mont Tendre, reaches an altitude of only 5500 feet. Many of the rivers which traverse this section have pierced deep gorges for themselves. There are also a small number of high, wind-swept, and rather infertile valleys inclosed between the narrow parallel ranges. The Jura occupies somewhat more than one tenth of the area of Switzerland.

II. Jura

Lying between the Alps and the Jura, the plateau or basin region of Switzerland is by far the most favored, both agriculturally and industrially, of the three great divisions of the country. It extends in a belt fifteen to twenty miles wide from Lake Geneva to Lake Constance, and occupies nearly three tenths of the area of the country. On the side of the Jura, where it is lowest,

III. Plateau region

## GOVERNMENT OF SWITZERLAND

the plateau has an elevation of from 1100 to 1500 feet. On its higher Alpine side it reaches an extreme elevation of 6500 feet.

### **Climate**

Switzerland's wide differences of elevation produce a corresponding variety in weather conditions. Confined within less than two degrees of latitude (from  $45^{\circ} 49' 2''$  to  $47^{\circ} 48' 32''$  north), the country nevertheless exhibits the normal climatic range of thirty-four degrees. There are sheltered regions in the south which enjoy the soft, warm climate of northern Italy, while but a few miles away, measured vertically rather than laterally, are icy, arctic solitudes. The crests of the higher Alpine ranges form a gigantic dividing wall between polar and equatorial winds. In consequence rainfall is generally abundant and the country well watered. Air increases in purity directly in proportion to the height above sea level, and Switzerland is justly famed in this respect. Beauty of landscape abounds on every hand, — the grim, terrible, and awe-inspiring side by side with the gentle, soft, and pastoral.

So great has been the bounty of Mother Nature to Switzerland in all these ways that one is likely to forget how stepmotherly she has been in other respects. Apart from building stone, cement, and salt, the mineral resources of the country are negligible. Coal and iron, the fundamentals of modern industry, must be imported. On every hand transportation has great natural

## PHYSICAL BASIS OF THE FEDERATION

barriers to overcome. No country has richer meadow or farm lands, but the overshadowing mountain masses limit them narrowly in extent.

With such heavy handicaps upon industrial and commercial development, it is not strange to find that Switzerland is still in the main an agricultural and pastoral country. Every inch of arable land is fertilized and intensively tilled. Earth originally carried in baskets upon the backs of peasants and deposited wherever the rocks gave foothold yields its carefully garnered quota to the year's crop. Of the entire productive area of Switzerland slightly more than a third is devoted to grass and meadows, and nearly three tenths to forestry. Much of the land devoted to these two purposes could be made to yield a return in no other way. The remaining one third of the arable land of the country is divided between fruit production and ordinary crops, — 18.7 per cent of the whole being devoted to the former and 16.4 per cent to the latter. Swiss fruit enjoys a fame in Europe not unlike that of Californian fruit in the United States, and is largely exported in the form of preserves. In addition to orchards it is the Swiss custom to plant rows of fruit trees on both sides of the highways running through the country, thus adding materially to the output.

Perhaps the most striking single fact with regard to the various uses of Swiss arable land, however, is the relatively small portion —

Agricultural  
and  
pastoral  
pursuits

## GOVERNMENT OF SWITZERLAND

slightly less than one sixth of the whole — under crops and in gardens. It affords some index of the limitations set by nature to the supply of land available for such uses, and also of the difficulty of adapting Swiss “perpendicular farms” to this form of cultivation. Switzerland imports a larger proportion of its grain supply than any other European country, for only about one fifth (21.5 per cent) is produced at home, and that of rather inferior quality.<sup>1</sup> Potatoes are produced in quantities almost sufficient for the domestic demand. Hemp, flax, and tobacco also are grown to a small extent. In five cantons the grape is cultivated, chiefly in vineyards terraced with extreme expenditure of skill and labor upon the sides of steep hills. The industry is suffering under competition from Italy, France, and Spain, but still produces about one half of the annual consumption of wine.

It is on the side of animal husbandry, however, that Swiss farmers are most successful. Nearly three fourths of the total value of their annual production is due to this branch of agriculture. A considerable number of hogs and some goats are raised, but beef cattle, cows, and milk products are the fundamental reliance of peasant cultivators. It is the custom of Swiss farmers to

<sup>1</sup> Unless otherwise noted, statistics quoted in these pages with regard to Swiss industries are the latest obtainable which deal with conditions as they existed before the outbreak of war in 1914.

## PHYSICAL BASIS OF THE FEDERATION

keep domestic animals during the winter in stalls located in the basement of their châteaux. Upon the advent of spring all the cattle of a village are gathered together and driven to meadows upon the lower levels of near-by mountains. As summer advances, higher and higher pastures are sought out by the herdsmen and their flocks. Not only the richest grass, but whole fields of aromatic herbs and flowers of wondrous perfume, spring up rankly in these mountain meadows as fast as the receding snow leaves the ground open to the sun. The peculiar purity and richness of Swiss milk and dairy products are attributed to this luxuriant pasturage. Cowherds remain with the flocks until the snows of early autumn force them once more to return to the villages in the lower levels. Cheese, condensed milk, and milk chocolate, all of which enjoy a great reputation abroad, are the principal products of this form of Swiss agricultural industry.

Narrow as are the limitations and great as are the difficulties to overcome, it must be admitted that Swiss agriculture gets every ounce of productive capacity out of the soil. Great diligence, patience, and trained intelligence are necessary to produce this result. These qualities are furnished, it should be noted, not by aristocrats or gentlemen farmers but by the rank and file of the rural population. Switzerland is a land of small peasant holdings, nearly 300,000 in number, which support all together two million



## GOVERNMENT OF SWITZERLAND

people, or more than one half (53.5 per cent) of the population of the republic. These holdings average less than twenty acres, but each of them represents a definite "stake in the country" for the peasant proprietor and the members of his family.

### **Manu- factures**

Switzerland's manufacturing industries are located principally in the plateau district of the north and west. Textiles take first rank, with a total of over 100,000 employees engaged in silk, cotton, woolen, linen, and embroidery factories. In machine building, metal working, and electrical and chemical industries, 82,000 workers are engaged. Jewelry and watchmaking employ nearly 35,000. Other important industries are the manufacture of food products, clothing, wood-working, paper and graphic trades, clay and stone works. In 1913 there were 8101 factories in Switzerland, with 320,000 employees, of whom a third were women.

In addition to the large number of women in factories there are many others who are kept busy during their spare time in the various home industries which are still carried on in Switzerland, principally in woodworking, embroidery, and textiles. Thus employment is furnished not only in cities, but, in dull seasons of the year, to peasants and members of their families. For two centuries the famous Swiss watchmaking industry was carried on in this way by the cattle-raising peasants of the Jura.

## PHYSICAL BASIS OF THE FEDERATION

Owing to the competition of American machine-made products, however, it is now being transferred to factories in the Bern district.

No account of the economic organization of the Swiss is complete without some reference to the "industry of foreigners" (*industrie des étrangers*) which they have developed to so high a degree. Through it they coin into hard cash even those large portions of their territory which are ordinarily put down as unproductive. Unproductive these districts are indeed, by usual economic processes; but as snow-covered peaks, mighty glaciers, or shimmering lakes, they are the chief magnets which annually draw into the country three and a half million tourists, health seekers, and sport lovers. Switzerland has long been known as the "playground of Europe," but the number of visitors from the United States and even more distant countries has grown so rapidly of recent years that it deserves to be called the playground of the world. In 1912 there were 3585 hotels and *pensions* largely devoted to tourist traffic and employing all together 43,136 persons, half of whom were women. The gross receipts of these establishments amounted to fifty million dollars and the net receipts to twelve millions. Other millions are spent by tourists in transportation and local purchases. By her enterprise in this field Switzerland adds large purchasing power to her home market and provides no inconsiderable share of the balances

## GOVERNMENT OF SWITZERLAND

she needs in other countries for the purchase of foreign raw materials, foodstuffs, and manufactures.

**Population** According to the census of December 1, 1910, Switzerland's total resident population was 3,753,293. For several years the country has shown an average annual surplus of births over deaths of about 35,000. There are wide variations in density of population, and the highest figures are recorded, of course, in the plateau or basin region and the lowest in the Alpine districts. But for the country as a whole the average is 234.8 persons per square mile, — an amazing figure considering the large area occupied by mountains. Only the intensive agricultural and industrial development of the country makes possible this living together within its boundaries of so large a population maintaining relatively high standards of living.<sup>1</sup>

In spite of the predominantly agricultural character of its economic life, Swiss population shows a considerable tendency to congregate in cities. None of these approximates metropolitan dimensions as such things are reckoned in western Europe or the United States. However, there is

<sup>1</sup> By way of comparison it may be helpful to note that in 1910 only three of our states showed a greater density of population than the average for all Switzerland, — namely, Massachusetts, Rhode Island, and New Jersey. For the continental United States as a whole the average density was 30.9 per square mile, or less than one seventh that of Switzerland.

## PHYSICAL BASIS OF THE FEDERATION

a fringe of progressive, prosperous, and rapidly growing municipalities in the plateau district of the north and west. Zürich, the largest, had an estimated population of 205,000 in 1913; Basel, 137,000; Geneva, 136,700; Bern, 94,700; and Lausanne, 74,000.

Besides the gigantic physical barriers that shut off the more habitable lowlands and valley districts of Switzerland from each other, the population is also divided to an extreme degree by differences of language and religion. In 1910, German was spoken by nearly seven tenths (69 per cent); French by one fifth (21.1 per cent); and Italian by one twelfth (8 per cent) of the people. A peculiar dialect known as "Romansch" is still spoken in the Grisons by about 1 per cent of the Swiss population. Of the three principal languages, German predominates in nineteen states, which occupy the whole northern and central sections of Switzerland, French in the five western states, and Italian in one only, the southern state of Ticino. Italian is the only tongue that shows an increase; almost twice as many people spoke it in 1910 as in 1880.

According to confession the Swiss people were divided in 1910 into Protestants, 56.7 per cent; Roman Catholics, 42.8 per cent; and Jews, .5 per cent. Protestants are in a majority in twelve cantons, Catholics in ten. There is very little shifting back and forth of communicants, but during the last two decades the Catholics have

## GOVERNMENT OF SWITZERLAND

gained slightly, probably as a result of the Italian influx noted above. Religious lines in Switzerland follow the most bizarre directions, due chiefly to complicated historical and geographical causes. Nor do they coincide with the boundaries of the three great languages.

### Immigration

As one explanation of the success of democratic institutions in Switzerland it has been customary to state that the country has no great immigrant problem to solve. Nothing could be farther from the truth. In 1910 the census showed 552,011 foreigners in Switzerland, or nearly 15 per cent of the total population.<sup>1</sup> The effects of this large immigration are most marked in the principal border cities. While most of the foreigners resident in the country belong to the working classes, there are also many tradesmen and commercial men among them whose advent has been accompanied by a quite perceptible degree of "peaceful penetration" on the part of foreign capital. A considerable number of the resident aliens have fled from their own countries to escape army service or because of political offenses, and the presence of this element occasionally gives rise to great solicitude. The large masses of foreign born also cause trouble in con-

<sup>1</sup> Of these foreigners, 39.6 per cent were from Germany, 36.7 per cent from Italy, 11.5 per cent from France, 7.2 per cent from Austria-Hungary. A rapid increase took place in the foreign population of Switzerland between 1900 and 1910.

## PHYSICAL BASIS OF THE FEDERATION

nection with poor relief, naturalization, and the military system of Switzerland. In party politics, particularly when relations with other countries are involved, they are a disturbing element. All together, therefore, Switzerland has an immigration problem on her hands which in proportion to the size of the country is probably as large and difficult as our own.

Two political conclusions may be based upon the industrial and social conditions prevailing among the Swiss. In the first place, a people divided by so many geographical barriers, so divergent in language and religion, and also, it may be added, in race and customs, must needs provide ample leeway in its governing machinery for local liberties and local self-rule. As a matter of fact this condition is fully met by the federal system of government and by the large measure of decentralization prevailing in the various states.

✓  
Con-  
clusions

Secondly, Switzerland is admirably qualified for popular government. Twenty-two centuries ago Aristotle observed that "the best material of democracy is an agricultural population; there is no difficulty in forming a democracy where the mass of the people live by agriculture or tending of cattle."<sup>1</sup> Now not only are the Swiss largely agricultural and pastoral, but, as was noted above, the line separating industry from agriculture is not so sharply drawn in Switzerland as in other

<sup>1</sup> "Politics," VI, 4.

## GOVERNMENT OF SWITZERLAND

countries. Certainly the economic virtues of the two classes are largely the same, — intense application, shrewd practicality, trained intelligence, and the production to as great an extent as the opportunities permit of high-grade commodities. Peasant and artisan alike, therefore, are the solid, dependable sort of human material from which alone free governments may be built.

Defying countless obstacles and surmounting frequent catastrophes, the Swiss have builded slowly and stanchly rather than rapidly and brilliantly. They take a singularly sensible view of their own work. For a long time they have been accustomed to smile politely to themselves over the somewhat indiscriminating praise of their political achievements by enthusiastic foreign observers. Much of what the Swiss have accomplished may be regarded as they regard it, — namely, as a matter of course, — but it is nevertheless true that usually they have displayed democratic simplicity, boldness combined with good sense, and a highly economic use of limited resources in the accomplishment of their political purposes. No doubt their task has been made easier by certain favoring conditions, such as the absence of metropolitan cities, of great masses of ignorant voters, and of enormous differences in the distribution of wealth. On the other hand, these favoring circumstances scarcely exist to such a degree as to place the Swiss republic in a class by itself, imitation of which by the United

## PHYSICAL BASIS OF THE FEDERATION

States or other democracies is out of the question. Some of the problems of government which Switzerland has solved represented as heavy a burden in proportion to her strength as any that America has attempted. It should be remembered also that in whatever we may undertake, our financial resources, both absolutely and relatively, far exceed those of the little republic of the Alps.

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## CHAPTER II

### DEVELOPMENT OF THE SWISS FEDERATION

Pre-  
Roman  
period

**F**OR unnumbered centuries prior to the dawn of history the country that is now Switzerland was occupied by a race the relics of which show that it passed through the typical evolution from the age of stone to the age of bronze and from the age of bronze to the age of iron. A large part of this primitive population lived in lake dwellings remarkable for their number and extent.

At the time when Roman writers first mention Switzerland, it was inhabited by Keltic tribes, chief among which were the Rhaetians, who lived in the projecting eastern angle of the country, and the Helvetians, who occupied all the plateau or basin region and the adjacent mountain districts. The Helvetians raised cattle and carried on a rude sort of agriculture, but were almost constantly engaged in warfare among themselves and in raiding expeditions against their neighbors.

Roman  
occupation

In 58 B.C. Cæsar began the conquest of the Helvetians. For four centuries thereafter Rome occupied the country, imposing its language, religion, and civilization upon the native tribes. Primitive forms of agriculture soon gave way

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before the better methods taught by the conquerors. Swiss mountain passes and valleys were opened up by well-made roads of the sort which everywhere followed the triumphant flight of the Roman eagles. Along these highways trade flowed freely, under the protection of the *pax Romana*. Toward the close of the imperial occupation Christianity spread rapidly. But, on the other hand, during this period Roman soldiery domineered over the native peoples, Roman vices sapped their vitality, and the crafty Roman policy of *divide et impera* reduced them to political impotence.

With the breakdown of the Empire under barbarian inroads the influence of Rome in Switzerland was quickly obliterated, and little remained to show it save the ruins of her highways and engineering works. As early as 260 A.D. the first wave of the Allemannians, a German race, reached northeastern Switzerland. Successive waves of this conquering people followed, until by the middle of the fifth century they had spread as far west as Geneva. Also from Savoy, where land had previously been allotted them by the Romans, the Burgundians pushed into Switzerland, occupying Valais, Freiburg, and other western districts. From these two basic stocks the Swiss people and civilization of today are largely derived. However, it was in exclusively Teutonic territories that the political evolution of modern Switzerland originated and received much of its

Bar-  
barian  
invasions

## GOVERNMENT OF SWITZERLAND

distinctive form. Not till a comparatively recent date do the French-speaking descendants of the Burgundians begin to coöperate in this process.

The Allemannians were pagan worshippers of Odin, who seized goods and lands alike and reduced their captives to slavery. In accordance with Teutonic customs the territory conquered by these tribes, under the leadership of various chieftains and kings, was divided into counties, each of which was placed under the rulership of a count, chosen by the people from among the nobles. When war broke out all the fighting men united under a duke or leader of their own choosing. From time to time popular assemblies of freemen were held to decide upon common action, to render judicial decisions, and for religious and other purposes. In spite of these democratic elements there were sharp distinctions among the Allemannians between the "free" and the "unfree." Indeed, the feudalism which was to spread over Switzerland later had its roots in the sharp social cleavages established by the barbarian conquests.

**Frankish  
conquest**

As a result of the Frankish conquest in the sixth century Switzerland passed under the control of the Merovingian dynasty (536-752 A.D.), and later of the Carolingian dynasty (752-843 A.D.). With the exception of the reigns of a few enlightened monarchs, these were centuries of disorder, war, and misery. One bright spot was due to the coming, early in the seventh century,

## DEVELOPMENT OF THE FEDERATION

of a party of Irish monks, whose fiery preaching spread the gospel over the entire country and led to the foundation of many churches, shrines, and monasteries. Under the Merovingians the system of government was further centralized. Feudalism was thoroughly established; cruelty and oppression were widespread. Even the monasteries became landlords on a great scale, although as a rule their tenants were treated more humanely than those of the lay nobles.

Early in the ninth century Switzerland became a part of the German Empire. As such it took its full share of the fighting and much more than its full share of the suffering caused by the long-drawn-out duel between the imperial and papal powers. Not till the end of the thirteenth century does the country begin to have an independent history. It had been but a minor pawn in the game of conquest waged first by the Romans, then by Allemannians and Franks; it was nothing more in the hands of the Holy Roman Emperors.

In the great struggle against feudalism which was to be fought out later over the whole of Europe, walled cities everywhere became centers of the democratic movement. Fortunately Switzerland had such centers from an early date. Owing to the pouring in of marauders from the east, the building of strong walls around all towns of a certain size was ordered in the tenth century (917 A.D.). In return for the burden

Peasant  
com-  
munes  
and  
walled  
cities

## GOVERNMENT OF SWITZERLAND

thus imposed and to encourage immigration from rural districts, certain privileges were conferred upon the *Bürger*, or citizens living within such fortified places (*Bürge*n). But Switzerland possessed other possible centers of resistance to feudal oppression. These were the high and remote valleys of the country, protected, not by man-made walls, but by frowning mountain ramparts. Communities dwelling within such valleys could resist assaults as well as could the fortified cities of the plain. If beaten they could flee pursuit, a thing which the *Bürger* could not do. Finally, they had the advantage of offering far less to the cupidity of conquerors than did the wealthy lowland centers of trade and industry. Switzerland owes its liberty to a union of peasant communes and walled cities. It was by the former, however, that the first great historic step was taken toward independence.

The three  
forest  
states

Uri, Schwyz, and Unterwalden were three such mountain communities, clustering about the densely wooded shores of Lake Luzern. Although resembling each other closely in their physical surroundings, these forest states, as they came to be called, differed greatly in their political status. In 1231 Uri had obtained a charter declaring its immediate dependence upon imperial authority, and consequently it enjoyed immunity from all lesser overlords. In Schwyz freemen preponderated, but neighboring magnates retained certain, or rather very uncertain, feudal

## DEVELOPMENT OF THE FEDERATION

privileges. A charter placing the free community of Schwyz in immediate dependence upon the Emperor had been granted in 1240, but after a few years the Habsburgs ignored it in practice. Politically Unterwalden was inferior to the other two. It had a smaller number of freemen, and its soil was controlled to a greater extent by lords, both lay and ecclesiastical.

In 1273 Rudolph of Habsburg was elevated to the imperial throne. Scion of a family of robber barons which established itself in Aargau as early as the tenth century, this feudal soldier of fortune had acquired great holdings in that canton and elsewhere in Switzerland. With imperial power and feudal overlordship now united in the hands of one and the same man, the people of these districts were naturally alarmed over their special rights and privileges. Toward his Swiss possessions generally Rudolph behaved magnanimously, showing particular favor to the cities. As far as the forest cantons were concerned, however, while admitting the imperial privileges of Uri he evaded without denying the claims of Schwyz. Meanwhile Rudolph purchased certain estates surrounding the three cantons, which led to the suspicion on their part that he meant to cut them off from the lake, their natural channel of communication with the outside world.

Whatever the three cantons had to hope or fear from Rudolph, they harbored no illusions

## GOVERNMENT OF SWITZERLAND

The "Perpetual League" of 1291 regarding the attitude of the cruel and ambitious Albert, his only son. Rudolph's death, therefore, became the signal for prompt action. A fortnight later, on August 1, 1291, the men of Uri, Schwyz, and the lower valley of Unterwalden, "in view of the evil of the time," entered into a "Perpetual League" that they might "better defend themselves and their own."<sup>1</sup> Each of the three peoples bound itself by oath "to hasten to the aid of the other . . . in order to resist attacks of evildoers, and to avenge injuries." Further they agreed that they would "in no wise receive or accept any judge who has obtained his office for a price, . . . nor one who is not a native or resident with us." Other clauses deal with several kinds of domestic crime, — murder, arson, robbery, contempt of court, concealment of fugitives from justice, and the like, — truly a list that throws a flood of light upon the disorder of that period.

Primarily the "Perpetual League" of 1291 was a defensive alliance. The confederates were seeking, not new rights, but the preservation of ancient liberties threatened, as they feared, by the forces of reaction.. In the pursuit of this

<sup>1</sup> The venerable document containing this agreement is still preserved in the archives of Schwyz. Latin is the language used. Photographic reproductions may be found in Oechsli, "Les Origines de la Confédération suisse," Bern, 1901; and in Hilty, "Les Constitutions fédérales de la Suisse," Neuchâtel, 1891. An English translation is presented in Vincent's "Government in Switzerland," pp. 285-288.

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purpose they were careful to affirm their intent to act "in such a manner that every man, according to his rank, shall continue to yield proper obedience to his overlord," — that is, they expressly recognized such feudal obligations resting upon themselves as had a legal basis. Nor did the treaty into which they entered provide for a permanent organ to secure its enforcement. Arbitration when needed was the nearest approach to anything of the sort. In case of dissension "prudent men of the confederation shall come together to settle the dispute . . . as shall seem right to them, and the party which rejects the judgment shall be an enemy to the other confederates."

Cautious and informal as were the terms of this league, often as its overthrow was menaced both from without and from within, it nevertheless remains the starting point of all subsequent political development in Switzerland. From a constitutional point of view the history of the country since 1291 may be divided into the following periods:

- I. The Old Confederation (1291–1798).
- II. The Helvetic Republic (1798–1803).
- III. The Act of Mediation (1803–1815).
- IV. The Pact of 1815 (1815–1848).
- V. The Period of the Federal Constitution (1848 to the present time).



## GOVERNMENT OF SWITZERLAND

### I. *The Old Confederation* (1291-1798)

In the struggle for the succession which followed Rudolph's death, the new league threw in its fortunes with Adolph of Nassau. Although allied temporarily with Zürich in this cause, the confederates were unsuccessful at first, and in 1292 were compelled by Austrian forces under Albert of Habsburg to sue for peace. Six years later Albert defeated his rival and was at last in a position to punish thoroughly his rebellious Swiss peasants. The exploits of Wilhelm Tell and other mythical heroes of the struggle against Austrian tyranny are assigned to the period immediately following. There is no reliable evidence in support of the Tell story, but as symbolic of Swiss love of liberty it has a significance as deep as that of historic fact.

After the assassination of Albert, in 1308, the Habsburg family lost possession of the throne temporarily. Henry VII, Count of Luxemburg, who succeeded Albert, granted a charter to Unterwalden and confirmed the earlier charters of Uri and Schwyz. But at the death of Henry, after a reign of only five years, civil war again broke out in the Empire, and once more the confederates aligned themselves against the Habsburgs. To punish them Duke Leopold, with an army of 15,000 men, officered by the flower of Austrian chivalry, marched upon

## DEVELOPMENT OF THE FEDERATION

Schwyz. At the pass of Morgarten 1300 Swiss peasants stopped the advance of the invaders by hurling trees and heavy bowlders down upon them from the overhanging crags, and then charging with halberts, scythes, and iron-studded clubs, drove the Austrians into the neighboring lake. It was a ghastly medieval butchery, but it demonstrated the cohesive power of the federated cantons and the fighting qualities of simple peasants even when pitted against the proudest nobility of Europe.

Morgarten,  
1315

Returning to their homes, the victorious peoples of the three forest states renewed the Perpetual League of 1291 in a somewhat strengthened form (1315). Fortune deserted the Habsburgs at this time, and for more than a century no member of that house reached the imperial throne. Except for brief intervals, wars were continuous during this period. At Sempach, where the heroic Arnold Winkelried fell, the Swiss repeated the lesson they had first taught the Austrians at Morgarten (1386). Two years later the peasants of Glarus were again victorious at Näfels over the same enemy. Peace with Austria lasted for seventy-five years thereafter, a blessed relief for the suffering and impoverished people of the League.

Sempach

Meantime the League received several accessions. After many bloody struggles Luzern also had shaken off the Austrian yoke, and in 1332 it entered into an offensive and defensive alliance

## GOVERNMENT OF SWITZERLAND

with the confederates. The accession of this city, with its strategic and commercial position at the foot of the lake, greatly strengthened the League. In 1351 the walled city of Zürich became one of the allies. Because of its wealth and power it was immediately hailed as capital of the League. Zug, a small town, and Glarus, a rural community, joined in 1352. To the west the city of Bern had been building up a powerful state and gathering allies for her own wars with Austria. Her accession in 1353 brought the membership of the League up to eight, a number that remained unchanged for more than a century and a quarter.

The  
League of  
Eight,  
1353

The completion of the League of Eight brought with it not only a great extension of power and territory but also some internal development. It became the custom for diets composed of representatives from the allied states to meet from time to time, usually at Zürich, Luzern, or Bern. Still there was very little uniformity with regard to intercantonal obligations. "While each of the five new members was allied with the original nucleus—the three forest districts—these five were not directly allied to one another: Luzern was allied with Zürich and Zug; Zürich with Luzern, Zug, and Glarus; Glarus with Zürich; Zug with Luzern and Zürich; Bern with no one except the three original members." <sup>1</sup>

<sup>1</sup> W. A. B. Coolidge, article "Switzerland," *Encyclopaedia Britannica*, 11th Edition.

## DEVELOPMENT OF THE FEDERATION

Nevertheless, political unity was slowly evolving amid this tangle of alliances.<sup>1</sup>

Two important agreements reached during the latter half of the fourteenth century also indicate a growing spirit of independence toward the outer world and of coöperation within the League. The first of these was the Priests' Letter, which was adopted in 1370 by all the cantons except Bern and Glarus. It derives its name from the strong positions taken with regard to the abuse of clerical jurisdiction. Ecclesiastics of foreign citizenship dwelling within Swiss territory were forbidden by the Priests' Letter to summon a citizen of the confederation before any foreign court, lay or clerical. If they wished to push cases of this character they were to be obliged to take them into the local courts, except in matters falling within the jurisdiction of the bishop. Laymen were also forbidden to begin suits against Swiss citizens in foreign courts. All persons living in Swiss territory who were bound by oath of vassalage to the dukes of Austria were required to swear allegiance to the confederation, and this latter oath was to take precedence over all others, past or future. Private feuds and all armed expedi-

*Pfaffen-  
brief,  
1370*

<sup>1</sup> Evidence of this fact is afforded by the use, beginning about the middle of the fourteenth century, of the name "Switzerland" (derived from "Schwyz") for the confederation as a whole. Earlier writers had employed the term "*les Liges de la Haute Allemagne*"; that is, the Leagues of Upper Germany.

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tions not sanctioned by the authorities were prohibited. Finally, the confederates agreed to protect at any cost all the roads in their territory, so that wayfarers, whether peasants or city dwellers, foreigners or natives, might travel in complete security of goods and person.

Covenant  
of  
Sempach,  
1291

The Covenant of Sempach (1393) was the second major agreement entered into by the Swiss during the fourteenth century. In part it was suggested by certain unfortunate experiences at the battle of Sempach, which occurred seven years earlier; hence the name. As the first war ordinance of the League it became the basis of all subsequent military legislation by the old confederation. Politically its importance is great because it received the direct approval of all the cantons, both rural and urban. Without interfering in any way with cantonal autonomy of army organization and control, the Covenant of Sempach lays down certain important rules regarding the conduct of campaigns. No canton or part of a canton should be allowed to begin fighting arbitrarily. Wars should be entered upon only for just cause and not until after the constituted authorities, acting in conformity with their alliances, had decided formally and solemnly upon their prosecution. All those who as soldiers of the same city or rural state belonged under one banner should remain together in battle as long as danger threatened. Even the wounded were not allowed to leave the field until the fighting was

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over. Deserters were to be severely punished by the courts of their own cantons. No booty was to be taken while the fighting lasted. Afterwards each soldier should hand over whatever he had secured to his officers, who were to divide it equitably among those who had taken part in the battle. Side by side with these very practical rules on warfare and plunder, the Covenant of Sempach contained also some humane precepts that were far in advance of the time. Soldiers were not to sack or burn churches and convents unless they were occupied by enemies or enemy goods. No one should attack women unless by their outcries they gave warning to an enemy or engaged in the fighting themselves.

During the ~~fifteenth~~ century the Swiss developed an astounding military and diplomatic activity. Although but recently emancipated from foreign control, the cantons, separately or in partnership, and finally the Confederation itself, seized every opportunity to gain territory, whether by purchase, forfeiture, or wars of conquest. Nor did they rule their new subject territories with moderation or justice: the Swiss of this period, as Vincent shrewdly remarks, "were democrats at home but not abroad."<sup>1</sup> A very different relation existed with a number of allied districts. Although not counting as full members of the League, some of the latter, as for example St. Gallen and Bienne, were

Era of  
military  
power

<sup>1</sup> "Government in Switzerland," p. 23.

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given seats and votes in the diet. Others, like Schaffhausen and Mühlhausen, were treated merely as allies without being given representation in the council of the confederates. In this way Graubünden, Valais, Geneva, and several free imperial cities of Germany, including even Strasburg at one time, were brought into coöperation with the League.

Alliances were entered into also with the greater continental powers. The Swiss fought their last war with Austria in 1415 and emerged from it with a number of conquered districts firmly in their possession. Only sixty years later they leagued themselves with this ancient enemy of theirs, and also with France and Germany, for the conquest of Burgundy. Supported by the gold of Louis XI, the Swiss did most of the fighting in the short but terrible campaigns which followed (1474-1477). Not even in their wars for freedom did they display greater bravery than at Grandson and Morat. After the defeat and death of Charles the Bold at Nancy several new territories occupied by French-speaking populations were acquired in the west. Bern and Freiburg, but especially the former, were the chief gainers by these additions. From this time on the Swiss entered more and more largely into the sordid business of selling their fighting men to foreign powers. It is estimated that between 1474 and 1715 they received from France alone 2,675,000,000

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*livres* (\$477,500,000) for mercenaries, of whom 700,000 lost their lives in the service of that country.<sup>1</sup>

An attempt by the Emperor Maximilian in 1499 to reassert German authority over Switzerland resulted in a short but bloody war in which the confederates were again victorious. The influence of Germany, which had been growing less and less since the Burgundian war, now ceased entirely, although the independence of Switzerland from the Empire was not formally recognized until the Peace of Westphalia (1648).

In spite of the brilliancy of her victories and the rapidity of her expansion, Switzerland nevertheless entered upon a process of internal decay during the sixteenth century. The original success of the League, as was pointed out above, had been due to the coöperation of two distinct elements, — rural communities and cities. Proud because they had founded the League and fought the first battles for independence, the rural states could not help looking down somewhat upon the cities which had not joined the League until later. Devoted also to their ancient democracies, they hated and feared the rising tide of aristocracy in the cities; for as the urban centers grew richer and more populous, smaller and smaller groups gained control of their governments. The forest states also complained with great bitterness that the cities always received

Internal  
dis-  
ensions

<sup>1</sup> Baker, "Model Republic," p. 346.



## GOVERNMENT OF SWITZERLAND

the lion's share of the new territories gained by war.

A savagely contested civil war lasting eight years (1442-1450 A.D.) sprang from these controversies. Later a quarrel over the spoils of the Burgundian war brought the League again to the point of dissolution. One diet failed to settle the difficulty. Although the situation seemed hopeless, a second was called at Stanz to make a last effort for peace. The second diet was about to break up into angry factions when a remarkable revulsion of feeling occurred, due to the moral influence of Nicholas von der Flüe, a greatly venerated hermit of the neighborhood. Historical investigation has shown that the hermit Nicholas, or Brother Klaus, as he is more popularly known, was as wise politically as he was saintly, so that the success of his mediation can scarcely be considered a miracle pure and simple. By the agreement finally reached on this occasion, known as the Convention of Stanz, the old Perpetual League, the Priests' Letter, and the Covenant of Sempach were reaffirmed. All the separate alliances which the cantons had formed to further their own interests, against the Confederation itself if need be, were dissolved. Intervention by one canton in the affairs of another was forbidden except in cases of revolt threatening the interests of the League, when the Confederation itself was empowered to take the necessary steps. New

Nicholas  
von der  
Flüe

## DEVELOPMENT OF THE FEDERATION

and more detailed regulations regarding the division of booty and conquered territory were included in the agreement.

By another agreement entered into the same day, Freiburg and Solothurn were admitted to the League, the first accessions for more than a century and a quarter. They had long desired to become members, but had been kept out because of the opposition of the rural states to any increase in the urban element. In 1501 the northern cities of Basel and Schaffhausen entered the League, greatly increasing its strength in that direction. With the admission of Appenzell in 1513, the League reached a membership of thirteen, a number which remained unchanged to the end of the Old Confederation.

League  
of  
Thirteen,  
1513

Whatever may be our judgment as to its ultimate results, the first effect of the Swiss Reformation in the sixteenth century was to intensify enormously the internal dissensions of the League. In 1531 civil war broke out between Protestant Zürich and Bern on the one side and Catholic Uri, Schwyz, Unterwalden, and Zug on the other. Peace followed in the same year, but for a long time thereafter Catholics and Protestants held separate diets. Switzerland had become a house divided against itself, and the resultant decline in its strength continued throughout the seventeenth and eighteenth centuries. Within many of the cantons religious persecution and strife of the most vindictive character became

The  
Swiss  
Refor-  
mation

## GOVERNMENT OF SWITZERLAND

chronic. Appenzell, the inner districts of which were intensely Catholic while the outer were as intensely Protestant, split into two divisions, or *Rhoden*, in 1597. Thereafter each was allowed a half vote in the general diet. Fortunately for itself, the Confederation remained neutral throughout the Thirty Years' War. In 1712, however, a second devastating civil war, originating in religious differences, broke out.

The Old  
Confed-  
eration

At the end of the eighteenth century the Old Confederation retained but a shadow of its earlier strength. It had never developed a permanent organ of government. General diets met from time to time, but they were formal and ineffectual affairs. As a rule delegates were not allowed to go a step beyond their instructions, nor could a majority of the diet bind the minority. The central government of Switzerland at this time was even more impotent than that of the United States under the Articles of Confederation. So far as foreign influence was not decisive, the real springs of political action were to be found in the separate cantons and in the special compacts — leagues within a league — which they formed among themselves.

Within the thirteen cantons a remarkable diversity of government prevailed. Six of the older rural states were pure democracies ruled by sovereign assemblies of free citizens. These were Uri, Schwyz, Unterwalden, Zug, Glarus, and Appenzell. Of the urban states three

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—Zürich, Basel, and Schaffhausen — possessed popular representative governments. Even in these cities, however, suffrage was limited to guild members, and large classes of citizens were excluded from any real participation in political affairs. The remaining four urban states — Bern, Luzern, Freiburg, and Solothurn — were close oligarchies. Among these four the government of Bern enjoyed a great reputation for business capacity. At a period of general impoverishment in Switzerland the oligarchs of that city had succeeded in amassing a state property estimated by some writers to be worth nearly fifty million *livres*. Nevertheless, this system of government was unintelligent, oppressive, and honeycombed with various forms of corruption. The other Swiss states ruled by oligarchies shared these defects, but were far from being as capably managed as Bern. In all of them violent uprisings against the dominant family groups were of frequent occurrence. Even in cantons with more popular governments, party and religious strife ran high and disorders occasionally broke out. An additional cause of trouble existed in the rural territories which all the cities had acquired outside their walls. Peasants dwelling in these districts were virtually excluded from participation in the government and were heavily oppressed into the bargain. Some of the rural democracies treated their outlying territories in the same high-handed manner.

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### II. *The Helvetic Republic* (1798-1803)

Under such conditions it is not strange that the outbreak of the French Revolution was followed by numerous local uprisings in Switzerland. Aided by these insurrectionary movements, the armies of the Directory swept through the country in 1798, bringing the Old Confederation to an end, after a history of five centuries. Except on the part of Bern there was no resistance worthy of the name. As they had already done in Belgium, the Rhineland, and other conquered territories, the new masters of Switzerland proceeded to make it over on the French model, giving it the name of the Helvetic Republic. Regardless of old cantonal lines, twenty-two departments were marked out. A national legislature was established consisting of a Senate and a Grand Council, each canton sending four representatives to the upper and eight to the lower house. Executive matters were intrusted to a directory of five members elected by the senators and councilors. Local legislatures were established in each of the twenty-two departments, but prefects and subprefects were sent into them to look after the interests of the national government. Thus Switzerland, which had been the weakest of leagues with the largest possible measure of local autonomy and the greatest diversity of local institutions, was at one stroke converted into a highly uniform, centralized, bureaucratic state.

French  
central-  
ization

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Other changes wrought by the French swept away the accumulated mass of medieval rubbish. Subject territories were released from their oppressive masters, and the old narrow oligarchies were overthrown. A uniform citizenship and a common democratic suffrage were established. Educational, financial, and legal institutions were reformed. Torture was abolished. Freedom of residence and of trade and liberty of belief and of the press were guaranteed. The new constitution even borrowed from American sources the idea of a constitutional referendum.<sup>1</sup>

Taken all together, however, these changes were too sudden and extensive to last. Moreover, the French rulers' conception of themselves as the evangelists of a new democratic gospel was too often belied by their deeds. Immediately upon their entrance into the country these "liberators" had confiscated the enormous state treasure of Bern. Subsequently they made constant and heavy requisitions upon the country for men and money. The Helvetic Republic was independent in appearance only: in reality it was ruled from Paris and in the interests of France.

Hailed as friends and deliverers, the French soon came to be looked upon as enemies and oppressors. Insurrection promptly broke out against them in several districts and continued

Swiss  
resist-  
ance  
against  
the  
French

<sup>1</sup> Cf. C. Borgeaud, "Établissement et révision des Constitutions en Amérique et en Europe," p. 23.

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throughout the whole of the five-year period during which the new constitution was in existence. Opposition was particularly strong in the old forest cantons, which were far too well satisfied with their own kind of democracy to care for the latest French model of the Year III. In putting down these revolts the French soldiers were guilty of extreme severity. The massacre of men, women, and children at Stanz (1798) was not soon forgotten by the Swiss. To all these miseries was added the outbreak of war between France and Austria, as a result of which Switzerland became the battlefield of the contending armies.

### III. *The Act of Mediation* (1803-1815)

Napoleon, then First Consul, sent Ney to pacify Switzerland, and as soon as this task was accomplished called a conference of Swiss representatives at Paris to form a new constitution. The plan which he presented to this body reveals a thorough and even sympathetic knowledge of local conditions and a statesmanlike grasp of the needs of the hour.<sup>1</sup> By the Act of Mediation which resulted from the conference at Paris,

<sup>1</sup> It has recently been pointed out by W. E. Rappard in his "Notre grande République Sœur," p. 32, that Napoleon was much impressed at this time by the federal constitution of the United States as suggesting a possible solution of the problem confronting him.

## DEVELOPMENT OF THE FEDERATION

nineteen Swiss cantons were recognized, each of which was given a government to deal with local affairs. The six new cantons thus established were St. Gallen, Graubünden, Aargau, Thurgau, Ticino, and Vaud. To some of the nineteen states were given democratic, to others representative institutions, as one or the other accorded more closely with their former usage. Suffrage was limited by a property qualification. Regardless of reactionary influence, the newly liberated subject territories were continued as sovereign entities. The ancient title of "confederation" was restored, and a diet provided for, to which the larger cantons sent two and the smaller cantons one representative apiece. Six of the principal states were recognized as "*Cantons Directeurs*." Diets were to be held in each of them in turn, and the chief official of the canton in which it was held became *Landamman* or president of Switzerland for the time being.

Under the Act of Mediation Switzerland enjoyed unwonted peace and prosperity for eleven years. Nevertheless, it remained the political ward of the Man of Destiny during this period. By a treaty which the new confederation immediately concluded with France, the Swiss bound themselves to supply the French army with 16,000 men, a number which was reduced in 1812 to 12,000. With the decline of Napoleon's power, however, the Act of Mediation was doomed. As the allies closed in upon the Em-

Local  
con-  
ditions  
recog-  
nized



## GOVERNMENT OF SWITZERLAND

peror, Valais, Neuchâtel, and Geneva were set free from French control and admitted to the confederation (1814).

### IV. *The Pact of 1815* (1815-1848)

#### Reaction

With Napoleon finally out of the way, every ancient privilege in Switzerland sought clamorously for restitution. Even the Congress of Vienna was unwilling to grant all the demands of these reactionaries. Particularly important was its refusal to return the newly made states to their former condition as subject territories. With some few concessions to liberal opinion, the Swiss finally succeeded in working out for themselves a constitution known as the Pact of 1815. In the main, however, the new constitution provided as far as possible for the restoration of the conditions prevailing under the Old Confederation.

A diet was again set up in which each of the twenty-two cantons cast one vote. This placed Uri, with a population of 12,000, on exactly the same plane in federal affairs as Zürich with 200,000 or Bern with 300,000. The sessions both of the diet and of the cantonal legislatures were to be held behind closed doors. The office of *Landamman*, or president of Switzerland, was abolished. Bern, Zürich, and Luzern became *Vororte*, or capitals, the principal executive officials of each taking turns in the direction of

## DEVELOPMENT OF THE FEDERATION

federal affairs for two years at a time. One important new power was conferred upon the diet; namely, that of sending national troops into any district threatened with disorder. But the most significant feature of the Pact of 1815 was its silence upon such important topics as religious liberty, political equality, the right of assembly, and freedom of the press, all of which were left to the cantons to deal with or neglect as they chose. In the cities which they had ruled formerly the old oligarchies returned to power.

For fifteen years Switzerland remained peaceful under the Pact of 1815, but politically it was a peace of stagnation, not of progress. Unlike the Bourbons, however, the patricians of the cities had learned something during their exclusion from office, and now exercised their powers with moderation, at least so long as insurrection was not threatened. Some progress was made toward uniformity by the more advanced cantons, which entered into "*Concordats*," or voluntary agreements on such subjects as coinage, freedom of residence, and mixed marriages.

Liberalism in Switzerland was not dead, however, and the news of the July Revolution in France (1830) galvanized it into vigorous activity. Attack was first made upon the antiquated state constitutions, nine of which — those of Ticino, Thurgau, Zürich, Aargau, Solothurn, Luzern, St. Gallen, Freiburg, and Schaffhausen — were

Victory  
of  
liberal-  
ism

## GOVERNMENT OF SWITZERLAND

fundamentally revised the same year, all without a drop of bloodshed. Among the reforms introduced were political equality, abolition of property qualifications for the suffrage, direct election of legislators, publicity of legislative sessions, liberty of the press, right of petition, and legal security of personal and property rights. In 1831 the patricians of Bern, after a futile show of resistance, gave way to the new order. The situation in Basel, however, was complicated by a bitter feud between urban and rural elements which resulted in violence. It could be settled only by federal intervention and the division of the canton into two parts (1832), each of which was given one half vote in the diet.

Religious  
dissen-  
sions and  
separate  
leagues

To the tidal wave of democracy which began sweeping over the country in 1830 the diet opposed no objection. On the other hand, it refused to guarantee the reformed state constitutions. The radical cantons — Bern, Zürich, Luzern, Aargau, Thurgau, St. Gallen, and Solothurn — thereupon formed a combination known as the League of Seven, for mutual protection. Although there were many bad precedents for such leagues within a league in the history of the Old Confederation, this action was clearly unconstitutional and certainly unwise. Feeling threatened in their turn, the conservative cantons naturally formed a league of their own, the League of Sarnen, which included the three forest cantons, and Urban Basel, Valais, and

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Neuchâtel, all of which withdrew their representatives from the general diet.

Meanwhile the need of a revision of the Pact of 1815 had made itself felt. There was a widespread demand for liberal reforms to bring it into harmony with the changed conditions in most of the states, and also for an increase of the powers of the federal government. A draft for a new constitution embodying these changes was presented in 1833, but a combination of those who thought it too radical with those who thought it too conservative brought about its rejection. Immediately thereafter the diet decreed the dissolution of the League of Sarnen, and placed a sufficient number of troops in the field to make resistance impossible. But the diet failed to take the further step, demanded by every consideration of justice and fair play, of dissolving the League of Seven at the same time.

Early in the forties the Swiss liberal movement developed new strength and radicalism. It soon collided with the Catholic element over such questions as the abolition of monasteries, the taxation of church property, and the exclusion of the Jesuits. Disorder and bloodshed occurred in Geneva and Aargau; in Valais and Zürich they assumed serious proportions. In 1845 a "*bewaffneter Sonderbund*," or armed separate league, was formed by the seven Catholic cantons, — Luzern, Uri, Schwyz, Unterwalden, Zug, Frei-

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Sonder-  
bund  
war, 1847

burg, and Valais. Primarily their purpose was to push ultramontane policies as far as possible, and, if need be, to secure the intervention of the reactionary great powers of Europe in support of this end. They were also opposed to any further centralization of power in the hands of the confederation. On November 4, 1847, the diet finally decreed the dissolution of the *Sonderbund* by military force. The Catholic party put 79,000 soldiers in the field as against 100,000 raised by the confederation. Largely owing to the attitude of Lord Palmerston, the British foreign secretary at this time, Austria, France, and Prussia were prevented from interfering on behalf of the *Sonderbund* until it was too late. In a brilliant but most humanely conducted campaign of only nineteen days' duration (November 10-29, 1847), General Dufour, commander in chief of the federal forces, completely crushed the rebellion.

### V. *Period of the Federal Constitution* (1848 to the present time)

Early in 1848 the diet appointed a commission of fourteen men to draft a new constitution. Caught in the revolutionary movements of that year, the reactionary great powers of Europe were in no position to interfere with the progress of this work. Leaders of political thought in Switzerland had long been close students of the

## DEVELOPMENT OF THE FEDERATION

American constitution, and it is not surprising, therefore, that they now accepted in the main its solution of the problem of reconciling state sovereignty and federal power.<sup>1</sup> The influence of the Napoleonic Act of Mediation was also apparent in the new draft. Upon submission it was adopted by a vote of 15½ cantons with a population of 1,897,887 to 6½ cantons with a population of 292,371, and proclaimed September 12, 1848.

Rapid progress toward unification was made by the new federal government. With a strong, continuous, central power in control, there was an immediate and marked decline of party and religious rancor. A federal post-office system was created without delay, followed later by the nationalization of the telegraphs. In 1850 a national coinage supplanted the diverse cantonal currencies. Uniform weights and measures also were established. A large share of the attention of the new government was given to improvements in roads and canals, and to reform of the schools and the military system of the country. In foreign affairs also a new spirit made itself manifest. Thus in regard to the Neuchâtel question the federal government took an extremely bold attitude toward Prussia (1857), and was so manifestly supported in that attitude by the determination of the whole Swiss people to fight to the last ditch if need be,

Unifi-  
cation

<sup>1</sup> Rappard, *op. cit.*, p. 37.

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that Frederick William IV finally relinquished all claims upon the canton.

Social  
progress  
and  
democ-  
racy

Between 1848 and 1870 many of the cantons provided by constitutional amendment for the extension of social legislation and the introduction of a large measure of democratic control, — the latter chiefly by means of the referendum and initiative. As a result a demand arose for revision of the federal constitution to bring it into harmony with the new order of things in the sphere of state government. The vigor and success with which the federal government had met its first obligations also led to a strong movement in favor of a further centralization of power. In 1872, a revision designed to carry out these two ideas was defeated by a small majority. Two years later, however, a new draft along the same general lines was carried by a vote of 14½ to 7½ cantons, and by a popular vote of 340,199 to 198,013. The constitution of 1848, as thus revised in 1874, remains the basic law of Switzerland to the present day.

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## CHAPTER III

### THE SWISS FEDERAL CONSTITUTION

Extreme  
detail  
of Swiss  
constitu-  
tion

**T**HE present Swiss federal constitution as adopted in 1848, revised in 1874, and added to by subsequent amendments, is nearly half as long again as the constitution of the United States. To a slight degree only is its greater length due to the inclusion of matters not of true constitutional significance, although there are one or two glaring instances of this sort. The real reason for the extent of the Swiss constitution is the extreme detail to which it goes, first, in defining the powers of the federal government; and, second, in delimiting the competence, legislative and administrative, of the federation on the one hand and the cantons on the other.

A typical illustration of the first of these differences is afforded by the careful treatment, occupying two articles of ten clauses all together in the Swiss constitution, of the subjects of coinage, paper money, and banking. Only one of these topics is expressly mentioned — and that with the most extreme brevity — in the constitution of the United States. Such controversies, constitutional, political, and economic, as have raged about these subjects in our country

## THE FEDERAL CONSTITUTION

would be impossible in Switzerland. Americans are accustomed to make a great deal of the distinction between "express" and "implied" powers. Of the Swiss constitution it may be said that much of the power it confers is express, and correspondingly less implied than is the case with the constitution of the United States.

As to the second point, American students are usually somewhat astonished to find in the Swiss constitution sections dealing with such subjects as fishing and hunting, qualifications for the practice of the liberal professions, illness and burial of paupers, epidemics and cattle diseases, suppression of gambling houses and regulation of lotteries. It will be noted, however, that the real significance of these sections lies not so much in the subject dealt with as in the thoroughgoing, if not always successful, effort to define sharply the spheres of state and federal government. Everywhere is found evidence of detailed and patient compromise between the advocates of cantonal rights and those of federal power. Hence comes much of the prolixity of the Swiss constitution. Prolixity is tiresome, of course; but when it anticipates and prevents causes of internal friction and possibly of civil strife, it takes high rank among the political virtues.

In one respect, however, the constitution of the United States is much more detailed than that of Switzerland. The authors of the latter were

## GOVERNMENT OF SWITZERLAND

not believers in the doctrines of Montesquieu, and accordingly they did not provide for the separation of powers with an elaborate system of checks and balances in the government which they created. This distinction comes out plainly in the principal subdivisions of the two documents. In the American constitution the preamble is immediately followed by the three great articles devoted to the legislative, executive, and judicial powers respectively. The basis of the principal subdivisions of the Swiss constitution is quite different. A brief preamble is followed by a very lengthy chapter devoted to "General Provisions," dealing mostly with powers and rights and their distribution. The second chapter describes the federal authorities, each of which is taken up in a separate subdivision. A third chapter presents the various methods of amending the constitution,<sup>1</sup> and the document closes with a small number of temporary provisions.

The  
preamble

The purposes set forth in the preamble of the Swiss constitution and in Article 2 of Chapter I, which properly belongs to it, are almost identical with those of the American document. In the

<sup>1</sup> The Swiss practice of distributing amendments as made throughout the body of the original document, distinguishing them only by duplicate numbers from the articles to which they are logically subordinate, doubtless has its advantages. But it does not emphasize so clearly as our American practice the historic sequence of formal constitutional changes.

## THE FEDERAL CONSTITUTION

Swiss instrument an invocation addressed to Almighty God precedes the preamble. There is no reference to Deity in our federal constitution, unless one considers the phrase "in the year of our Lord," used in fixing the date, as such. With a couple of exceptions, however, all our state constitutions do contain an acknowledgment of divine power or supplication for divine guidance.

Although certain words and phrases occurring in the preamble and body of the Swiss constitution might be taken to mean that it established an alliance, league, or confederation, there is no doubt that it actually establishes a federation. Confederation  
or  
federation  
The former are organized by treaties, the latter by constitutions. "It was the opinion of the men of 1848, however, that they were creating a constitution, and today such is also the general legal conviction."<sup>1</sup> The central government which they set up is a complete entity, possessing legislative, executive, and judicial organs. Furthermore, this central government exercises certain of its powers directly over the people and territory of the country. Without entering upon the thorny theoretical questions as to the divisibility of sovereignty and its location in a federal system, it is clear also that the federal and the state governments of Switzerland each possess and exercise as the highest authorities the powers belonging to their respective spheres. Of course further constitutional amendment may

<sup>1</sup> Burckhardt, "Kommentar," 2d ed., p. 15 *et passim*.

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set new limits to the powers of the federation and of the states. There have been a number of such cases, notably in 1874, and several times since. In the aggregate they have effected a very large increase, both absolute and relative, of the federal power. As the constitution actually exists, however, it protects both the federation and the states in the exercise of their respective powers. Switzerland is therefore a federal government, and thus is fundamentally similar to the German Empire and the United States. It is not a unitary state such as France and England, beneath the central governments of which there exist only subordinate, dependent local governments.

The twenty-two cantons making up the Swiss federation are enumerated in the constitution. Admission of new states, if there were territory out of which to carve them, would therefore require constitutional amendment. A more exact statement of the number of cantons than that quoted above from the constitution would be nineteen whole and six half cantons. The latter were formerly parts of whole cantons which divided for various reasons: Upper and Lower Unterwalden in 1150, because of the difficulties of communication between the two valleys which formed the principal habitable sections of its territory; Appenzell Interior and Exterior, which separated in 1597;<sup>1</sup> and Urban and Rural Basel,

Half  
cantons

<sup>1</sup> See Chapter II.

## THE FEDERAL CONSTITUTION

which parted company in 1832.<sup>1</sup> Each of the half cantons has a government of its own as complete as that of any of the whole cantons. It counts for only half as much as a whole canton, however, in a constitutional referendum, and sends but one representative to the upper house of the federal legislature, whereas each of the whole cantons sends two.<sup>2</sup>

“The cantons are sovereign, so far as their sovereignty is not limited by the federal constitution; and, as such, they exercise all the rights which are not delegated to the federal government”<sup>3</sup> (Art. 3). Corresponding to the guarantee clause of the United States constitution,<sup>4</sup> but more explicit in its terms, the Swiss constitution provides that “the federation guarantees to the cantons their territory, their sovereignty, within the limits fixed by Article 3, their constitutions, the liberty and rights of the people, the constitutional rights of citizens, and the rights and powers which the people have con-

Cantonal  
guarantees  
and  
obligations

<sup>1</sup> See Chapter II.

<sup>2</sup> In only one particular, that of originating measures in either house of the federal legislature by correspondence (Art. 93, cl. 2), does a half canton count the same as a whole canton. This power, however, is seldom used. Cf. Raustein, “Die schweizerischen Halbkantone,” p. 135; also Burckhardt, “Kommentar,” 2d ed., p. 729.

<sup>3</sup> Cf. ninth and tenth amendments to the constitution of the United States. In Article 71, the Swiss constitution reserves “the rights of the people” as well as of the cantons.

<sup>4</sup> Constitution of the United States, Art. IV, Sec. 4.

## GOVERNMENT OF SWITZERLAND

ferred on those in authority" (Art. 5). On the other hand, "the cantons are bound to ask of the federation the guarantee of their constitutions, which is to be accorded provided (a) that they contain nothing contrary to the provisions of the federal constitution; (b) that they assure the exercise of political rights, according to republican forms, representative or democratic; and (c) that they have been ratified by the people, and may be amended whenever the majority of all the citizens demand it." It is apparent that a provision similar to the second of these clauses would have prevented the argument raised in the United States, but without success, against the initiative and referendum, on the ground that they destroyed "republican" government, as guaranteed by Article IV, Section 4, of our constitution. Also, if the third of these clauses were in effect in the United States, it would remove the great difficulties, amounting in some cases to practical impossibility, involved in the amendment of our state constitutions, and would thus open the door to much progressive legislation. In both instances the greater democracy of the Swiss constitution is apparent.

Switzerland, it will be remembered, had its civil war before the adoption of the constitution of 1848. To prevent any future development of states' rights and secessionist movements, Article 7 of that instrument provides that "all

## THE FEDERAL CONSTITUTION

separate alliances and all treaties of a political character between the cantons are forbidden." Further, "in case of differences arising between cantons, the states shall abstain from violence and from arming themselves; they shall submit to the decision to be taken upon such differences by the federation" (Art. 14).

In case of internal disturbances, or if danger is threatened by another canton, the authorities of the canton threatened shall give immediate notice to the federal executive. The latter body is authorized to take necessary measures within the limits of its power,—namely, to enforce the guaranty of cantonal constitutions,—and, in cases of urgency, to raise and employ troops not exceeding 2000 in number. The federal executive must summon the Federal Assembly immediately to assist it in meeting the emergency if more than 2000 men are required, or if they remain in arms more than two weeks.

Federal  
inter-  
vention

Since 1848 there have been eleven cases of internal disturbances in various Swiss cantons which have required the attention of federal authorities, although it is not clear that the action of the latter in all these instances amounted to intervention in the strict constitutional sense of the term. With the exception of the five cases occurring in the one canton of Ticino, most of them were due to local labor or political troubles which were settled by federal action



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without great difficulty. Considerably more serious were the disturbances in Ticino, the population of which is largely Italian in blood and language. They were due to extreme partisan and sectional feeling, which broke out in violence requiring federal action in 1855, 1870, 1876, 1889, and 1890,—in the last two cases approaching the proportions of insurrection.

In all eleven of the cases of disturbances in the cantons, the practice was to send one and sometimes two personal representatives of the federal executive into the disaffected territory. These representatives made every effort to mediate between the contending local factions and to arrange a settlement without the use of force. If these efforts resulted in failure, the representative of the central government was made a "Kommissär," or plenipotentiary of the federal executive with power to call in the necessary troops and take over part or all of the governing functions of the canton until order was restored and it became possible once more to intrust the government to the local authorities.

Certain consequences of distinct constitutional importance may be deduced from the practice pursued in the several cases of federal intervention. The central authorities do not have to wait until internal order is actually disturbed; they may take action as soon as such disturbance is threatened. Nor do they have to wait until the cantonal officials appeal for help, as

## THE FEDERAL CONSTITUTION

was shown by the Ticino case of 1889 and also by the Geneva case of 1864, in which the federal executive took action on the strength of private telegrams predicting disorder. Intervention is not barred by the fact that a canton is amending its constitution at the time. The federal plenipotentiary may take over as much of the power of the cantonal authorities as he finds necessary in order to restore peace. He has interfered with the secrecy of the telegraph; he has even interfered with the processes of local justice. In both cases he has secured approval. He may suspend the cantonal legislature and take over its power temporarily. He may even proclaim a state of siege. In a word, for the time being cantonal authority is made the ward of its federal guardians.

Switzerland seems to be much more drastic and more thorough in its conception of the power of federal intervention than is the United States.<sup>1</sup> Sweeping as the power undoubtedly is, the chief impression gained from accounts of its actual exercise<sup>2</sup> is that of restraint in invoking it and in the employment of force. Eleven cases of intervention since 1848 may seem a large number. It must be remembered, however, that prior to the establishment of the present republic the pages of Swiss history were marred

<sup>1</sup> For an excellent account of American experience, consult J. A. Woodburn, "The American Republic," pp. 172 *et seq.*

<sup>2</sup> Burckhardt, "Kommentar," 2d ed., pp. 152 *et seq.*

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by constantly recurring outbreaks of serious disorders and insurrection. Instead of evidences of instability, therefore, the relatively few and mild disturbances that have occurred since 1848 are really indices of the strength and decision of federal power.

With its seventy articles, Chapter I of the Swiss constitution, which is devoted to "General Provisions," accounts for more than half of that document. It can hardly be maintained that the numerous topics with which this chapter deals are arranged in strictly logical order. In the latter respect the American constitution is far superior to the Swiss. Dissimilar as are the "General Provisions" of the Swiss constitution, however, most of them present cases of the delimitation of power between state and federal authorities. In addition to this large category, a number of articles state the personal rights of Swiss citizens, and still a third group, to be dealt with later, confer rather extensive powers of social legislation.

Distribution of administrative functions

In the United States the general principle prevails that federal law shall be executed by federal officials, state law by state officials. No such sharp line of demarcation exists in Switzerland. To be sure, there are certain branches of the administration which are wholly federal; as, for example, customs, coinage, the gunpowder monopoly, posts, telegraphs, and telephones. Apart from such well-defined cases

## THE FEDERAL CONSTITUTION

as the foregoing, however, there are many curious and involved combinations of federal and cantonal action. The cantons even retain minor powers in connection with certain kinds of treaties, and they still exercise a small measure of control over the army. Certain advisory officials of the federal railways are chosen by the cantons, and the latter are large stockholders in the new federal bank. The federation legislates on hydraulic power, but actual administration in this field is largely retained by the cantons. Standards of weights and measures are fixed by the federation, but the cantons, under the supervision of the federation, enforce the laws relating thereto. Primary education is the business of the cantons, but the federation may grant subsidies to the latter in order to aid them to fulfill their duties in this field. The federation may construct at its own expense, or may aid by subsidies, public works which concern Switzerland or a considerable part of the country. The cantons collect the military exemption tax and pay one half of the gross proceeds to the federation. On the other hand, the alcohol monopoly is administered by federal officials, but the entire profits derived from it are divided among the cantons. The cantons also receive certain percentages of the profits or revenues of the federation from a few other sources.

While the federation thus shares part of its work with the cantons, the administrative

## GOVERNMENT OF SWITZERLAND

powers which remain in its hands are nevertheless very extensive. Moreover, they have been growing rapidly since 1874, principally by the creation of monopolies in certain fields of economic enterprise, and more recently by the establishment of institutions for social insurance. These gains were not made without the embittered opposition of the "*Kantönligeist*," — the little cantonal spirit with its jealous fear of any increase of the powers of the federal government. One of the vagaries of this spirit explains in part the extremely complicated division of power between federal and cantonal governments which is noted above. Advocates of centralization soon discovered that any clear-cut proposal to confer new powers on the federal government was almost certain to be voted down. If, however, the proposal was formulated in such a way as to require the coöperation of the cantons in the exercise of the power, or if it allotted to the latter a share of the profits, the chances of success were greatly increased. Nearly all the recent extensions of federal power illustrate this principle in one way or another. Thus centralization succeeds in Switzerland by adroitly throwing a sop to the states' rights element.

Legisla-  
tive  
powers of  
federation

In the field of legislation the federal government of Switzerland possesses much wider powers than does that of the United States. Thus the former is empowered by the constitution to deal with matters of civil, criminal, and

## THE FEDERAL CONSTITUTION

commercial law.) The right of marriage, of residence and settlement, and the collection of debts are expressly intrusted to it. In the field of social economics also it is given extensive powers, which will be discussed later. The federation can impose export duties as well as duties on imports. "Legislation upon the construction and operation of railroads is in the province of the federation" (Art. 26). Further, it is given general supervision over those roads and bridges in the maintenance of which it is interested. A point of major importance in this connection is the fact that the Swiss federation may deal legislatively with commerce as such; that is, it is not confined to the regulation of interstate commerce alone, — an illogical limitation which in the United States has led to such interminable economic and judicial controversies. The Swiss federation may also establish or subsidize institutions of higher education. The federal monopolies of gunpowder, telegraphs and telephones, alcohol, banknote issue, and railroads imply, of course, wide legislative powers.

An acute student of government both in Europe and the United States expresses the opinion that as compared with our American states the sovereignty of Swiss cantons "is confined to limits which are much more narrow, and even in the restricted circle of the powers attributed to them their independence is less real and not so well guaranteed. In addition to the fact that it

Sphere  
of the  
cantons

## GOVERNMENT OF SWITZERLAND

opens to the direct intervention of the federal powers numerous domains which remain closed to the action of the central power in the American union, the Swiss constitution really erects the confederation in some measure into a tutor and inspector of the cantons."<sup>1</sup> Where the association of federal and cantonal governments is so close as in Switzerland, it is no doubt true, as the same author contends, that the latter gradually become habituated to look up to the former as a superior to whom they owe obedience. Further, there is no supreme court in Switzerland which can protect the cantons by declaring that laws infringing their powers are unconstitutional.

While all these observations are undeniably correct, one should not infer from them that the cantons of Switzerland are constitutional nullities. On the contrary, each of them is the center of a very active political life of its own. Moreover, they possess certain means of defense against undue federal aggression — as, for example, the initiative and referendum, equal representation in the upper house of the federal legislature, and party organization. Usually also they may rely for protection upon the soberness and moderation of Swiss political character.

**Citizenship**    Citizenship, the second topic of importance discussed under General Provisions, is not for-

<sup>1</sup> Dupriez, "Les Ministres dans les principaux Pays d'Europe et d'Amérique," II, p. 175.

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mally defined in the Swiss constitution, as it is in our Fourteenth Amendment. Virtually, the matter is left to the cantons by the provision that "every citizen of a canton is a Swiss citizen" (Art. 43). For the rest, the authors of the constitution of Switzerland contented themselves with a number of provisions designed to protect citizens against cantonal aggressions upon their fundamental rights. Cantons and communes still retain much of the medieval jealousy of outsiders whose settlement amongst them might lead to demands for a share in local forest or meadow rights or for relief at the cost of local poor funds. Working against this tendency, the federal constitution seeks to secure as large a measure of freedom of movement and settlement as possible, but the result is a manifest compromise. Power to legislate on naturalization is given to the federation, with the interesting addition that it may determine the conditions under which "a Swiss may give up his citizenship in order to obtain naturalization in a foreign country" (Art. 44).

The Swiss constitution contains no separate bill of rights. However, twenty or more articles scattered among the general provisions deal with topics usually included under this title. Here, as elsewhere, the Swiss constitution is unusually explicit. Personal rights are not merely asserted, they are defined at some length. One notes with approval that corresponding duties



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are also insisted upon in immediate connection with the statement of the rights conferred and guaranteed by the constitution.

"All Swiss are equal before the law. In Switzerland there are neither political dependants nor privileges of place, birth, persons, or families" (Art. 4). "Freedom of conscience and belief is inviolable" (Art. 49). This is followed by an explicit prohibition of various forms of religious constraint, followed, however, by an admission of the right of parents or guardians to regulate the religious education of children up to the age of sixteen completed years. No abridgment of civil or political rights on religious or ecclesiastical grounds is permitted. On the other hand, it is provided that "no person shall, on account of a religious belief, be released from the fulfillment of a civil duty," — a provision which has been applied literally against those who sought to escape military service on such grounds.<sup>1</sup> "The free exercise of religious worship is guaranteed within the limits compatible with public order and good morals" (Art. 50). Under the latter clause a number of cantonal regulations directed against certain noise-making methods of the Salvation Army were upheld.<sup>2</sup> Further sections suggested by sad experiences with religious schismatics in the past empower both the federation and the cantons to preserve the peace as

<sup>1</sup> Burckhardt, "Kommentar," 2d ed., p. 457.

<sup>2</sup> *Ibid.*, p. 476.

## THE FEDERAL CONSTITUTION

between belligerent sects, and to prevent encroachment by ecclesiastical authorities upon the rights of citizens and of the state. "Contests in public and private law which arise out of the formation or division of religious bodies, may be brought by appeal before the competent federal authorities," i.e., before the federal court (Art. 50). Bishoprics may not be established upon Swiss territory without the consent of the federation.

Controversies over the Jesuits, it will be recalled, were largely responsible for the Sonderbund war. Upon its conclusion the triumphant secular party wrote into the constitution of 1848 a provision that "the order of the Jesuits, and the societies affiliated with them, shall not be received into any part of Switzerland" (Art. 51). In 1874, the anti-Jesuit provision was made expressly applicable to individuals as well as to the order, by the addition of a clause forbidding all activity in church and school to its members. A further clause adopted at the same time provides that "this prohibition may be extended, by means of a federal decree, to other religious orders whose activities are dangerous to the state or disturb the peace between religious denominations" (Art. 51). The constitutional legislation of 1874 on this subject closes with Article 52, as follows: "The foundation of new convents or religious orders, or the reestablishment of those which have been suppressed, is forbidden."

Religious  
restrictions

## GOVERNMENT OF SWITZERLAND

In spite of these drastic texts the Jesuits are said to have returned to Switzerland within ten years after their expulsion. Subsequently they have acquired great influence in certain cantons.<sup>1</sup>

In 1874, also, the right of marriage was placed under the protection of the federation (Art. 54). Controversies over mixed marriages, i.e., marriages between persons of different religious confessions, were of long standing in some cantons. Limitation of the right of marriage upon this ground, or because of the poverty of the contracting parties, or their previous misconduct, or on the basis of any other police regulation, is expressly forbidden. Illegitimate children are legitimized by the subsequent marriage of their parents. By another article, records of births, deaths, and marriages are made subject to civil authority (Art. 53).

Prior to 1874, the dead of some Swiss communes were refused burial because of non-membership in the religious confession controlling the cemetery. In the revision of that year burial places were placed under civil (i.e., cantonal) authorities, and the latter were made responsible for the decent interment of every deceased person. It has been held that "decent interment" includes even the tolling of the church bell in communes where this is customary at funerals.<sup>2</sup>

<sup>1</sup> Dauzat, "La Suisse Moderne," p. 206.

<sup>2</sup> Burckhardt, *op. cit.*, p. 505.

## THE FEDERAL CONSTITUTION

"The right of petition is guaranteed" by the Swiss constitution (Art. 57). Citizens also have "the right to form associations, provided that there be in the purpose of such associations, or in the means which they employ, nothing illegal or dangerous to the state." Abuses of this right are dealt with by cantonal legislation (Art. 56). Freedom of the press is also guaranteed, but both the cantons and the federation may protect themselves by legislation against abuses of this right. However, cantonal laws on the subject must be submitted to the federal executive for approval.

Right of  
association

A number of constitutional articles protect Swiss citizens against judicial abuses. No person shall be deprived of his constitutional judge; ecclesiastical jurisdiction is abolished; suits for personal claims against a solvent debtor must be brought before the judge of his domicile; imprisonment for debt is abolished; the cantons are bound to treat all Swiss citizens of other states equally with their own both in legislation and in all judicial proceedings; and finally, valid judgments in civil cases rendered in any canton may be executed anywhere in Switzerland <sup>1</sup> (Arts. 58-61).

One of the amendments of 1874 provided that the federation shall determine by law the conditions upon which a Swiss citizen may be

<sup>1</sup> On the last of these clauses cf. Art. IV, Sec. 1, of the Constitution of the United States.

## GOVERNMENT OF SWITZERLAND

deprived of his political rights (Art. 66). Under this amendment it was intended to do away with the deprivation of political rights which was sometimes inflicted as a part of the punishment for bankruptcy even in cases where the bankrupt had been guilty of no criminal act. Two laws which sought to realize the purpose of this article were defeated at referendum votes, however,<sup>1</sup> and a third bill on the subject prepared by the federal executive was not even debated by the legislative bodies. It would seem that debtors, even innocent debtors, are not popular in Switzerland.

### Frame- work of federal govern- ment

The second chapter of the Swiss constitution is devoted to the framework of the federal government and the distribution of powers among its various parts. As these topics are to be discussed in detail later it will be sufficient at this time merely to name and characterize briefly the three principal authorities. Of these the first is a bicameral legislature, known collectively or when the two houses sit together, as they do for certain specific purposes, as the Federal Assembly (*Bundesversammlung, Assemblée fédérale*). The less numerous branch of the Federal Assembly, which represents the cantons, is called the Council of States (*Ständerat, Conseil des États*); the more numerous branch, which represents the people, is called the National

<sup>1</sup> Referendum votes of May 23, 1875, and October 21, 1877.

## THE FEDERAL CONSTITUTION

Council (*Nationalrat, Conseil national*). Next in order is the Federal Council (*Bundesrat, Conseil fédéral*), or executive commission, the members of which are elected by the Federal Assembly. Finally there is a Federal Court (*Bundesgericht, Tribunal fédéral*), also elected by the Federal Assembly.

To the processes of amendment still another chapter is devoted by the Swiss constitution. Although the shortest of the chapters, it is much lengthier and provides more varied methods of amendment than does the corresponding article of the constitution of the United States.<sup>1</sup> Owing to the fact that the initiative and referendum play a large part in the process of making changes in the Swiss constitution, it has seemed best to discuss the latter topic in connection with direct legislation generally.<sup>2</sup>

There can be no doubt of the fundamental loyalty of the people of Switzerland to their constitution. In the Catholic sections of the country there is some dissatisfaction with the restrictions imposed upon the church, but that leaf has long since been turned over in the history of the country. More than a quarter of a century ago it was remarked by two careful students that those who favor centralization regard the constitution as a station on their road, while their political opponents consider it to be a wall against the further encroachments of the

Loyalty  
to the  
consti-  
tution

<sup>1</sup> Article V.

<sup>2</sup> See Chapter VI.

## GOVERNMENT OF SWITZERLAND

centralizing tendency.<sup>1</sup> Although the boundaries of federal and cantonal power have since been shifted, greatly to the advantage of the former party, the same attitude continues to prevail toward the constitution itself.

The Swiss fundamental law is not sufficiently ancient, especially in view of the revision of 1874, to have acquired the almost superstitious veneration with which the constitution of the United States was popularly regarded until ten or fifteen years ago. Although it met and solved successfully the great questions of federation and internal reform, the people of Switzerland have always considered their constitution a purely human, and therefore quite fallible, instrument. Consequently they have not hesitated to amend it freely. Yet, paradoxical as it may seem, there is in Switzerland at the present time a stronger popular inclination to accept the federal constitution as a whole and to oppose radical amendments to it than is the case in the United States.

<sup>1</sup> Adams and Cunningham, "The Swiss Confederation," p. 37.

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## CHAPTER IV

### • THE FEDERAL LEGISLATURE

**Basis of  
representation  
for the  
National  
Council**

**A**CCORDING to the constitution the National Council, or more numerous branch of the federal legislature, consists of "representatives of the Swiss people, chosen in the ratio of one member for each 20,000 persons of the total population" (Art. 72). When division of the total population of any canton by this constitutional basis of representation leaves a fraction of over 10,000, an additional seat is assigned. In order to safeguard the smallest states beyond any question, the constitution also provides that each canton, and in cases where divisions have occurred, each half canton, shall choose at least one member.

Once every ten years usually it is the practice in Switzerland, as in the United States, to take a federal census which serves as the basis of legislative apportionment for the ensuing decade.<sup>1</sup> All persons resident in a district are counted. As a result, districts in which there is a considerable foreign element receive a correspond-

<sup>1</sup> Censuses were taken in 1850, 1860, 1870, 1880, 1888, 1900, and 1910. An official statement of the resident population upon which the present apportionment is based may be found in the A. S. XXVII, 265.

## THE FEDERAL LEGISLATURE

ingly larger representation than districts where the population is purely Swiss. In 1902, an attempt was made by initiative petition so to amend the constitution that Swiss citizens only should be counted in determining the apportionment of representatives. Although much can be said in favor of this proposal, it ran counter to the political interest of many of the larger cantons, and was overwhelmingly defeated by popular vote, October 25, 1903.

Election districts for the Swiss National Council are laid out not by the state legislatures, Election districts as with us, but by the federal legislature. In general this work seems to be done fairly, but there have been charges of "election district geometry" (*Wahlkreisgeometrie*), or gerrymandering.<sup>1</sup> No district can be formed out of parts of different cantons (Art. 73). Originally there were only 120 seats in the National Council, but with the increase of population (and a fixed basis of apportionment) the number has grown until there are at present 189. Of these Bern, the most populous canton, was assigned 32; Zürich, 25; Vaud, 16; and so on down to the two smallest whole cantons, Uri and Zug, which were given 1 each. The size of the election districts varies, and also the number of seats assigned to each. Within the limitations set by the constitution, preference is given to larger districts

<sup>1</sup> Cf. E. Walter, "Dem Schweizervolke der Proporz," pp. 40 *et seq.*

## GOVERNMENT OF SWITZERLAND

returning two, three, four, or more members each. Thus, under the present apportionment there are only 6 single-member districts. In the country as a whole there are 49 districts, and the average number of members to a district is between three and four.<sup>1</sup>

### Suffrage

According to the federal constitution, every male Swiss who has completed twenty years of age is entitled to vote in elections and popular votes (i.e., initiative and referendum votes), unless excluded by legislation of the canton in which he resides. In districts returning more than one member of the National Council each voter is entitled to vote for as many candidates as there are seats to be filled. Exclusion of women from the right to vote is apparently implied by the use of the masculine form "*Schweizer*" in the constitution. A further clause gives the federation the power to establish by law uniform regulations for the exercise of the right of suffrage.<sup>2</sup>

General elections for the Swiss National Council are held on the last Sunday in October. Throughout the country it is customary to use the same day of the week for other elections and

<sup>1</sup> Stated in detail, there are 6 one-member; 7 two-member; 10 three-member; 10 four-member; 6 five-member; 3 six-member; 5 seven-member; and 2 eight-member districts. See the *Bundesgesetz betreffend die Nationalratswahlkreise* of June 23, 1911, in A. S. XXVII, 731.

<sup>2</sup> Cf. Burckhardt, *op. cit.*, p. 666.

## THE FEDERAL LEGISLATURE

for initiative and referendum votes as well. For the convenience of voters coming in from rural districts, the law permits elections for the National Council ~~to begin on the afternoon of the day (Saturday)~~ before the regular election day. On the first ballot an absolute majority is necessary to a choice. In case any seat remains unfilled as a result of this requirement, a supplementary election is held, usually two or three weeks later, at which a simple plurality is sufficient for election.

It should be noted that the system of election described above is established by law, not by the constitution.<sup>1</sup> There is nothing in the latter to prevent the introduction of a system of proportional representation for the election of federal representatives. Moreover, the existence of election districts returning a considerable number of members each would facilitate the application of this reform. On two occasions, however, when the advocates of proportional representation sought by initiative to secure an amendment to the constitution providing for its adoption, they were defeated at the polls.<sup>2</sup> A third proposed amendment to the same effect is pending at the present time.

"Every lay Swiss citizen who has the right to vote is eligible for membership in the National

<sup>1</sup> *Gesetz betreffend die eidgenössischen Wahlen und Abstimmungen* of July 19, 1872; A. S. X, 915.

<sup>2</sup> November 4, 1900, and October 23, 1910.

## GOVERNMENT OF SWITZERLAND

Council" (Art. 75). Dating from 1848, the word "lay" in this article recalls the religious strife which preceded the adoption of the constitution. Primarily, of course, it was designed to shut out the Catholic clergy and monastic orders, although it has also been defended on the ground of the alleged incompatibility between the functions of a minister of the gospel and the activities of party politics. The Catholic clergy are not specifically excepted, but in practice it amounts to the same thing, since a Catholic priest cannot divest himself of his priestly quality so long as he remains a member of that confession. A Protestant clergyman, on the other hand, becomes eligible simply by resigning his spiritual office. He may do this before he takes his seat, but he is not obliged to do it until after his election. One case is on record where a canny pastor made his resignation good only for the period during which he might remain a member of the National Council. In practice, however, the election of clergymen who at the time are engaged in religious activities as the chief means of gaining their livelihood, is very unusual. There are, however, several instances of the election of former Protestant clergymen who had given up their spiritual careers at an earlier date.

Term

The term of the Swiss National Council is three years,<sup>1</sup> the whole body being renewed at

<sup>1</sup> Except when cut short by dissolution caused by total revision of the constitution, which is now highly unlikely to occur.

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each election. A three-year term was decided upon to correspond with the term of the federal executive. Also it was believed that any shorter period would not afford members time to become familiar with their duties. While Swiss general elections for the National Council occur in October, the term of newly elected members is not counted as beginning until they assemble in Bern, the capital, on the first Monday in December, for the purpose of organizing the house.<sup>1</sup> Members whose election is not contested are admitted at once. Contested elections are referred to a committee, which reports usually on the following day.

By express constitutional provision a member of the Swiss Council of States cannot at the same time be a member of the National Council (Art. 77). The same article makes membership in the Federal Council incompatible with membership in the National Council, — a constitutional provision which, together with a number of others, sharply distinguishes the Swiss executive from the cabinets of England and France. Further, it is provided that officials appointed by the Federal Council may not at the same time be members of the house. A nice question of constitutional law has been raised with regard

<sup>1</sup> *Bundesgesetz betreffend die eidgenössischen Wahlen und Abstimmungen* of July 19, 1872; A. S. X, 915. The present house was elected October 25, 1914, and met for the first time December 7, 1914.

## GOVERNMENT OF SWITZERLAND

to officials appointed by authorities subordinate to the federal executive, as, for example, Swiss post-office appointees and the greater number of the officials of the Swiss federal railway system. By inference the better view seems to be that these latter also are excluded.<sup>1</sup>

Presiding  
officers

Constitutional provision also is made (Art. 78) for the election by the National Council from among its own membership of a president and vice president for each regular or extraordinary session. Care must be taken not to confuse these officials with the president and vice president of the federation. The latter are the most prominent executive officials of the republic, while the president and vice president of the National Council merely function as regular and substitute chairmen or speakers of that body. To secure rotation in these offices the Swiss constitution provides that "a member who has held the office of president (i.e., of the National Council) during a regular session shall not be eligible either as president or as vice president at the next regular session. The same member may not be vice president during two consecutive regular sessions."

Although it was thus the manifest purpose of the constitution that new presiding officers should be chosen at each "regular or extraordinary session," this has not been the actual practice. When the constitution was adopted

<sup>1</sup> Burckhardt, *op. cit.*, p. 671.

## THE FEDERAL LEGISLATURE

in 1848, it was thought that the legislative business of the federation could be transacted at one regular session each year. Experience soon demonstrated the necessity of at least two sessions of about four weeks each, the first of which is now held beginning the first Monday in November, and the second beginning the first Monday in June. By a legislative fiction, however, these are treated as two parts of one session. In practice the presiding officers chosen for the first remain in office for the second part of the session, and also during any extraordinary sessions held in the same year. It is also customary to promote the vice president of one year to the presidency for the year following. Of recent years the press of business has made necessary a brief session in March, and there are several instances of short extra sessions during other months.

In case of a tie in the National Council the president is given a casting vote (Art. 78). This provision of the constitution enables him to vote twice on measures which result in a deadlock on the first ballot. But in elections, i.e., of members of committees and bureaus, he votes in the same manner as other members. The president of the National Council is far from being as powerful and influential as the speaker of our House of Representatives. Nevertheless, the former office is considered a great prize by ambitious parliamentary leaders, and



## GOVERNMENT OF SWITZERLAND

those men who have been so fortunate as to attain it enjoy a special prestige among their party associates. The same is true of the corresponding office in the Council of States.

Com-  
pensation  
and  
mileage

Members of the Swiss National Council receive a compensation paid out of the federal treasury (Art. 79). By law this has been fixed at the very moderate sum of twenty francs for each day spent in attendance at legislative sessions. Absence or tardiness without excuse involves loss of the day's pay. Members also receive mileage amounting to twenty centimes per kilometer traveled each way.<sup>1</sup> This rate, which is equivalent to  $6\frac{1}{2}$  cents per mile, is less than one third the amount our congressmen still allow themselves. All mileage computations are determined by an official "Distance Indicator."<sup>2</sup> According to this authority the most distant commune is only 263 miles from the capital.

The same rates of pay and mileage are allowed for service on legislative committees, or commissions as they are called in Switzerland. These are appointed either directly by the house or upon nomination of a bureau composed of the president and vice president of the house and four tellers elected by that body. Reports of

<sup>1</sup> Twenty centimes per kilometer additional are allowed for travel over mountain roads where a higher posting charge must be paid.

<sup>2</sup> The latest version of the "Distance Indicator" may be found in the A. S. XXIX, 231 (1913).

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committees are presented by a "Referent" or reporter chosen for that purpose. Frequently two reporters are named, one to report in German, the other in French. At the end of each session a number of committees are appointed to make investigation during the recess and to prepare bills for submission at the next session. As a time-saving and specializing device this practice is doubtless quite justifiable, but some of the more economical Swiss are inclined to regard it as a senseless extravagance. Frequently the business of these committees is of such a character that it can best be transacted at cantonal capitals aided by cantonal officials. The latter arrangement naturally meets with approval from the advocates of states' rights, who are inclined to believe that far too much of the federal business is centralized at Bern anyway.

As we have just noted, the Swiss constitution goes into considerable detail regarding the composition of the National Council, but it is extremely brief regarding the composition of the Council of States, or less numerous branch of the federal legislature. Although an organ of the federation, the Council of States was designed in a peculiar sense to represent the cantons. Consequently it was felt that the latter should be left to decide everything possible regarding the make-up of this body. Following the American model, the Swiss constitution does

The  
Council  
of  
States

## GOVERNMENT OF SWITZERLAND

indeed provide for forty-four members of the Council of States, or two from each canton, except the half cantons, which choose one each<sup>1</sup> (Art. 80). Our own constitution, it will be recalled, prescribes in some detail the manner of election, term, and qualifications of United States senators. An American state may not, of course, change any of these qualifications, and according to the best authorities it cannot even add to them, although some efforts have been made in the latter direction.<sup>2</sup> But the Swiss constitution does not determine the method of electing members of the Council of States, it does not fix their term of office nor prescribe their qualifications, — all these matters being left to the discretion of the cantons. It does not even provide for the exclusion of ministers of religion from this house, as is done in the case of the National Council. On one point, indeed, the Swiss constitution is explicit, but then only to emphasize the sole right of the states in the matter, —

<sup>1</sup> Equality in the Council of States, thus guaranteed to the Swiss cantons, results in wide disparities from the point of view of the representation of the population proportionally. Uri, with 22,055 people in 1910, counted equally so far as seats in the Council of States were concerned with Bern, which had a population in that year of 642,744. Still, these disparities are not so extreme as those now existing in the upper house of our federal legislature. New York State had a population in 1910 of 9,113,614; Nevada, a population of 81,875. Yet each elects two United States senators.

<sup>2</sup> Cf. Beard, "American Government and Politics," p. 240.

## THE FEDERAL LEGISLATURE

namely, that salaries of the members of the Council of States are to be paid by the cantons (Art. 83).

As a result of this extremely states' rights attitude, a diversity of conditions exists in the Council of States which is unknown in the American Senate, its prototype. There is, however, a growing tendency toward uniformity. Thus ~~most of the cantons~~ now choose their representatives in the Council of States by direct popular election. In the pure democracies they are elected by the popular assemblies, which amounts to much the same thing. Seven cantons, however, — Bern, Freiburg, St. Gallen, Aargau, Vaud, Valais, and Neuchâtel, — still intrust the election of their representatives in the Council of States to the cantonal legislatures. A three-year term, corresponding to that of the National Council, is also becoming the general rule, but Zug chooses its representatives for four years, Freiburg for two, and Uri, Lower Unterwalden, St. Gallen, Vaud, and Neuchâtel for one year. There is nothing to prevent the recall of members of the Council of States at any time, and two of the cantons — Neuchâtel and Vaud — have given this power to their legislatures. By another provision of the federal constitution (Art. 91), which seems rather inconsistent with the general principle noted above, members of the Council of States must not be instructed as to their votes in that body. In the states where they are

Term

## GOVERNMENT OF SWITZERLAND

elected by the legislatures, the latter sometimes require them to render an account of their official conduct. All the cantons pay salaries and mileage to their representatives in the Council of States, usually at the same rates as fixed by the federation for members of the National Council. By a federal law, members of the Council of States also receive compensation and mileage from the federal treasury at the same rate as members of the National Council, for services on legislative committees, — a provision scarcely consistent with the intent of the constitution.

With the exception of these matters, nearly all of which are left to the decision of the cantons, there are only two provisions in the federal constitution regarding the composition of the Council of States. One of these (Art. 81) makes membership in that body incompatible with membership at the same time in the National Council or in the Federal Council. The other provides for a president and vice president of the Council of States, ~~chosen for the same terms and rotated in the same manner as the corresponding officers of the National Council,~~ with the added conditions that "neither the president nor the vice president may be chosen from among the representatives of the canton from which the president had been chosen for the regular session immediately preceding," and further, that "representatives of the same canton

## THE FEDERAL LEGISLATURE

shall not occupy the position of vice president during two consecutive regular sessions" (Art. 82). Although not strictly in accordance with the intent of the constitution, the Council of States, like the National Council, continues the same presiding officers in power during all the sessions, regular and extraordinary, of a year. Like the National Council, also, it customarily promotes the vice president of one year to the presidency of the next. In case of a tie vote and in elections, the president of the Council of States has the same power as the president of the other house.

At the very beginning of the constitutional provisions regarding all the organs of the federal government (Chap. II, Art. 71), the general principle is enunciated that "with the reservation of the rights of the people and of the cantons the supreme authority of the Federation shall be exercised by the Federal Assembly." This would seem to dispose effectually of the contention that the fathers of the Swiss constitution intended to establish a government of concurrent powers, checking and balancing each other. Later, in taking up the specific powers of the Federal Assembly, the constitution states that the two houses "shall consider all the subjects which the present constitution places within the competence of the federation and which are not assigned to any other federal authority" (Art. 84). Does this make the

**Powers  
of the  
Federal  
Assembly**

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Swiss legislative branch the residuary legatee of all federal powers of whatever kind, not definitely conferred upon other branches?

Later provisions of the constitution refer to the Federal Council as "the supreme directive and executive authority" (Art. 95), and to the Federal Court as established "for the administration of justice in federal matters" (Art. 106). If these clauses modify the earlier sweeping grants of power to the legislative branch, — and in the opinion of commentators of high authority they do,<sup>1</sup> — the correct interpretation is that executive or judicial functions not otherwise assigned must be presumed to be vested in the Federal Council and Federal Court, respectively. On the other hand, all federal legislative powers, express or implied, belong to the Federal Assembly. In addition, the Federal Assembly exercises certain executive and judicial powers that are conferred upon it expressly by the constitution. It may assume, and in practice frequently has assumed, other functions of this character.

Wide  
scope  
of execu-  
tive  
powers of  
Federal  
Assembly

A consideration of the executive powers conferred by the constitution upon the Federal Assembly will show that they bulk large, even in comparison with its sweeping legislative competence. The Federal Assembly elects the Federal Council, the Federal Court, the Chancellor, and the General (in chief) of the federal

<sup>1</sup> Burckhardt, *op. cit.*, p. 678.

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army. By law it may assume other powers of election and confirmation (Art. 85, cl. 4). It approves alliances or treaties with foreign powers, also the treaties made by cantons among themselves or with foreign powers (Art. 85, cl. 5). It takes "measures for external safety and also for the maintenance of the independence and neutrality of Switzerland." It declares war and concludes peace (Art. 85, cl. 6). It guarantees "the constitutions and territory of the cantons," intervenes to maintain such guarantees, takes measures for the internal safety of the country, and exercises the powers of amnesty and pardon (Art. 85, cl. 7). It takes measures for enforcing the provisions of the federal constitution and for fulfilling federal obligations (Art. 85, cl. 8). It has the "power of controlling the federal army" (Art. 85, cl. 9). Finally, it has the "supervision of federal administration and of federal court administration" (Art. 85, cl. 11). In spite of the language of the constitution, it is not to be inferred that all these functions are performed exclusively or directly by the federal legislature. Many of them, indeed, are handled by the executive, i.e., the Federal Council; but the important fact to remember is that the latter must seek legislative approval for all its actions within these fields.

The judicial powers of the Federal Assembly formerly included action as a court of last resort upon "protests against the decisions of the



## GOVERNMENT OF SWITZERLAND

Federal Council upon administrative conflicts" and upon "conflicts of jurisdiction between federal authorities" (Art. 85, cls. 12 and 13). By an amendment to the constitution adopted October 25, 1914, part of these powers are to be transferred to a federal administrative court.

Although the general grant of legislative powers to the Federal Assembly would seem to be sweeping enough, the constitution also confers directly certain specific powers of this character upon the federal legislature. These include passage of the budget, audit of public accounts, authorization of loans (Art. 85, cl. 10); creation of federal offices and fixing of salaries attached thereto (Art. 85, cl. 3); and the organization and election of federal authorities (Art. 85, cl. 1). The federal legislature also plays an important part in the amendment of the constitution.

Powers  
of the  
houses  
are  
concurrent

Unlike the constitution of the United States, the Swiss constitution confers no special or exclusive powers upon either of the two legislative houses. Thus in Switzerland the power of passing upon treaties is exercised equally by the National Council and the Council of States. Nor has either house any special powers in connection with appointments, impeachment, bills to raise revenue, or presidential and vice presidential elections. All business is transacted separately by the two houses except that they meet in joint session (1) to elect the Federal Council, Federal Court, Chancellor, and General

## THE FEDERAL LEGISLATURE

(in chief); (2) to exercise the pardoning power;<sup>1</sup> and (3) to decide conflicts of jurisdiction between federal authorities. In such joint sessions the 189 National Councilors have, of course, a marked preponderance of voting power over the 44 members of the Council of States. The more numerous house is also favored on these occasions to the extent that its president takes the chair.

So far as the constitutional distribution of powers is concerned, therefore, the two houses of the Swiss federal legislature are almost exactly concurrent, such small differences as do exist in this respect being favorable to the National Council. Lack of uniformity in the terms of its members also places the Council of States at a slight disadvantage. On the average, their terms are no longer than those of the National Councilors. Such differences in actual power as exist, or have existed, between the two bodies must therefore be explained largely on personal and historical grounds.

When the federal form of government was adopted in 1848, the Council of States, based upon the principle of equal representation, clearly continued the tradition of the old Diet;

The  
Swiss  
federal  
houses  
compared

<sup>1</sup> Twice a year the two houses meet in joint session for the consideration of 120 or more applications for pardon, some of them involving fines as low as 100 francs or imprisonment for a few days, — certainly a rather petty occupation for a federal legislature.

## GOVERNMENT OF SWITZERLAND

while the National Council, based upon the principle of the representation of the people of the cantons in proportion to their number, was wholly a new creation. For a few years thereafter men of greater prominence sat in the Council of States. This has long since ceased to be the case, and it is now generally admitted that the National Council exercises considerably greater influence than the Council of States. Care must be taken, however, not to overstate the case. As Dupriez very justly observes, while "the situation of the Council of States is in no wise comparable to that of the Senate of the United States," still "the National Council has not acquired the preponderance of the French Chamber."<sup>1</sup> In spite of its relative decline, therefore, the Council of States is neither a refuge for reactionaries nor a haven for the advocates of states' rights and special privilege.

Occasionally the argument is raised in Switzerland that if the Council of States agrees with the popular will as expressed by the National Council and referendum votes it is useless, while if it disagrees with the popular will it is pernicious. A proposal to abolish the Council of States on these grounds was rejected by the National Council in 1870 by a vote of sixty-four to seven. Back of this overwhelming majority was the conviction that in practice

<sup>1</sup> "Les Ministres dans les principaux Pays d'Europe et d'Amérique," II, 209.

## THE FEDERAL LEGISLATURE

the Council of States had often taken a more liberal view of legislative matters than the other chamber, and that it had at no time operated as an obstacle to the natural development of the country. Originally designed to reconcile the small cantons to the federal idea, it has survived this purpose, and although today the less important of the two houses, it has fully justified itself by the practical utility of its contribution to the workings of the bicameral national legislature.

Several general provisions regarding the conduct of legislative business are incorporated in the text of the Swiss constitution itself. Most of them have been supplemented extensively by law and by parliamentary rules. Thus the constitution requires that "as a rule" the sittings of the two houses shall be public (Art. 94). According to parliamentary regulations, however, secret sessions may be voted upon the motion of ten National Councilors or of five members of the Council of States, and it is also provided that the discussion of such motions shall be secret.<sup>1</sup> As a matter of fact, open sessions to which the public and representatives of the press are admitted are by far the more common. Debates are not officially reported, although stenographic notes of the more important proceedings are kept. Swiss newspapers seldom

<sup>1</sup> Regl. d. N. R., June 5, 1903, Art. 38; Regl. d. St. R., March 27, 1903, Art. 39.

## GOVERNMENT OF SWITZERLAND

publish verbatim reports of speeches, but they do present daily summaries of parliamentary discussions which are usually judicious and accurate. All three official languages — German, French, and Italian — are used on the floor of the houses. Most educated Swiss are bilingual, and members follow the speeches without apparent difficulty, no matter which language is used. An interpreter stands by the side of the presiding officer and translates his remarks into German if he uses French, and vice versa. Official documents, laws, and administrative orders of the federal government are published in all three languages.

### Extra sessions

Extraordinary sessions of the two houses are called by a resolution of the executive, i.e., the Federal Council, either acting alone, or upon the demand of one fourth the members of the National Council, or of five cantons (Art. 86). It is rather curious that instead of conferring power upon one fourth of the members of the Council of States in this connection, the constitution actually confers it upon five cantons, or about one fourth the total number of states in the federation. As a matter of fact, the cantons have never made use of this constitutional provision, and there is only one instance on record of a demand for an extra session originating with one fourth the membership of the National Council. It is important to note that no outside authority may prorogue or dissolve either of the

## THE FEDERAL LEGISLATURE

Swiss legislative bodies. They alone may take such action by a concurrent resolution.

The presence of a majority of the membership of either house is necessary to constitute a quorum (Art. 87). Decisions are reached by a majority of those voting (Art. 88). Members of both houses vote without instructions (Art. 91). Federal laws and federal resolutions shall be passed only by the agreement of the two houses (Art. 89), subject, however, to the referendum. Swiss commentators have discussed voluminously the theoretical distinctions between these two forms of expression of the legislative will.<sup>1</sup> In practice such distinctions are frequently disregarded. Federal laws are the higher of the two, and are presumed always to formulate legal commands. Organic laws are good examples. While legal commands binding upon citizens as well as officials may be found in federal resolutions, the latter form is preferred for all kinds of acts of approval and ratification, for acts ordering execution or completion of laws already enacted, for conveying instructions or issuing orders to the Federal Council, for replies to petitions and decisions upon appeal. Since the Swiss legislature passes upon both of these forms, it adds to ordinary legislative powers a power of passing upon administrative regulations which in other Euro-

Quorum

Forms  
of  
legis-  
lation

<sup>1</sup> Cf. Th. Guhl's "Bundesgesetz, Bundesbeschluss, und Verordnung"; also Burckhardt, *op. cit.*, pp. 713-723.

## GOVERNMENT OF SWITZERLAND

pean countries is usually confined to administrative authorities exclusively. However, this does not include the minor forms of administrative resolutions, — the *Bundesratsbeschlüsse*, *Verordnungen*, and *Rèlements*, — which are issued by the Federal Council alone. Thus the Swiss executive, subject of course to control by the two houses, undertakes most of the business which in American legislatures takes the form of special and private bills. In this way the Federal Assembly is spared the consideration of innumerable petty details and enabled to concentrate on matters of prime importance.

### Initiative

The right of originating measures belongs to each of the two houses and to each member of either house individually. Cantons may by correspondence exercise the same right (Art. 93). Since the establishment of the federal form of government, there have been but six or seven instances of the employment by cantons of their right of initiative by correspondence. These were concerned chiefly with requests for particular benefits or for exemptions from special burdens. All together, therefore, the legislative effect of the cantonal initiative has been practically negligible. It is also true that the right of initiative is almost never exercised nowadays by individual members of either house. Nearly always representatives who desire the introduction of a certain measure simply present a motion inviting the executive, i.e.,

## THE FEDERAL LEGISLATURE

the Federal Council, to prepare a report and draft a bill covering the case. If this resolution passes both houses, the executive in due time presents the report as requested, together with a bill drawn in full legal form. Incidentally the Federal Council does not have to wait for a request from the legislature before introducing a bill, as it possesses the full right of initiative on its own account (Art. 102).

There are manifest advantages in the practice described above. It is seldom that members of legislative bodies either in Switzerland or elsewhere are competent to draft legislation satisfactorily. By the Swiss system every bill is drafted by an expert authority, familiar not only with legal forms and constitutional limitations, but also with administrative experience in the fields affected by the measure. Legislators are set free from tasks for which they are not qualified and enabled to devote more time to the discussion of the broad general principles involved in bills and to the expression of local points of view thereon. Nor does there seem to be any fear on the part of the Swiss that the executive will take advantage of this situation by making its point of view prevail unduly as against that of the legislature. For the Federal Council is not only under the general control of the legislature, but must also appear before the two houses to explain and defend the bill it has drafted. Moreover, each branch of the legis-

Bill  
drafting



## GOVERNMENT OF SWITZERLAND

lature may reject the bill altogether or return it to the Federal Council with a recommendation that it be amended.

According to the Swiss constitution, it is held that every bill which is introduced is introduced into the National Assembly, i.e., into both houses and not into one or the other house separately. The failure of a bill in one house, therefore, does not prevent its discussion in the other. If bills pass in one house and not in the other, or if they pass both houses in different forms, a conference is arranged between the committees in charge of the bill in each house, and an effort is made to secure agreement.<sup>1</sup> Frequently harmony results, but, of course, if the houses stand out against each other the bill fails. Conflicts of this character, however, have never been pushed to the point of constitutional crisis in Switzerland.

Prior to the opening of each session the Federal Council presents to the presidents of the two houses the various bills and resolutions which are to be introduced. The presidents thereupon divide the business between them, each presenting to his own chamber the portion assigned to it. A considerable economy of time is thereby effected, — a point of no small importance with legislative sessions so short as they are in Switzerland. Meetings of the houses begin at eight or

<sup>1</sup> *Bundesgesetz über den Geschäftsverkehr* of October 9, 1902, Art. 6.

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nine o'clock every week-day morning except Monday, when they begin at three in the afternoon. Usually they last four or five hours. By this arrangement members are enabled to spend week ends at home. As adjournment draws near, two meetings a day are held if necessary.

Sessions of the Swiss federal houses are not opened with prayer as is customary in the United States. In making an address members usually rise and remain standing at their desks. If the speaker is forceful or a man of political importance, other members will leave their seats and crowd around him. There are few flights of oratory, most of the addresses being extremely matter of fact both in tone and content. If a dry and long-winded speaker holds the floor, his colleagues either leave the hall in droves or devote themselves unblushingly to conversation, smoking, newspaper reading, or private correspondence. On the whole, however, the Swiss National Council and Council of States rank among the best-behaved legislative bodies in the world. Turbulence is virtually unknown in either chamber. Personal good feeling prevails and the rules are neither lengthy, intricate, nor severe. The presiding officers are fair as between party groups and orators desiring the floor, resembling the English rather than the American speaker in this respect. A member may speak to a question three times if he so desires. Although cloture may be applied by

Customs  
of  
Swiss  
federal  
houses

Cloture

## GOVERNMENT OF SWITZERLAND

a two-thirds vote, it cannot be moved so long as a member who has not yet participated in the debate desires to introduce and explain an amendment. Of course, the problem of discipline is rendered easy by the comparatively small size of the two houses, especially of the Council of States, and the resulting closer acquaintanceship of the members. Also party spirit does not run so high in Switzerland as in the United States. Nor is there the ever present possibility of the fall of the ministry to heighten the excitement of parliamentary conflicts.

Age and  
training  
of Swiss  
legislators

The Swiss Council of States can scarcely be described as a much more venerable body than the National Council. Members of the former show an average age of 58.9, of the latter 56.2 years.<sup>1</sup> Educational standards are high in both houses, three fifths of the National Councilors and three fourths of the members of the Council of States being men of university training. It is worth noting that Swiss legislators, following the European custom, migrated from one university to another during their student days. Nor did they confine themselves entirely to the institutions of higher learning in their own country. All the great universities of Germany, France, and Italy contributed to their educational experience. Foreign travel and observation as

<sup>1</sup> The average age of United States senators in 1916 was 58.1 years; of members of the House of Representatives, 50.6 years.

## THE FEDERAL LEGISLATURE

well as academic training are thus represented to an unusual degree in the Swiss federal legislature. In the great majority of cases, moreover, its members have had experience in the legislatures or in the administrative and judicial service of their own states before their elevation to national office. Two fifths of the National Councilors and nearly half of the representatives in the Council of States are commissioned officers in the army, but as their duties in this connection take only part of their time, all of them have civil occupations as well. Taken in connection with the universal military training required in Switzerland, which virtually all the members have undergone, it is evident that the federal legislature ought to be well qualified to discuss questions of national defense.

Lawyers predominate in the Council of States, more than three fifths of its membership being recruited from the bar, while in the National Council only two fifths are members of the legal profession. In addition to its majority of lawyers, the present Council of States contains five journalists and two physicians. Business pursuits are represented as follows: manufactures and mechanical, two; transportation, one; trade, five, of whom three are bankers; no occupation stated, three. Considering the prominence of agricultural and pastoral pursuits in Switzerland, it is rather remarkable that there are no farmers in this branch of the Federal Assembly.

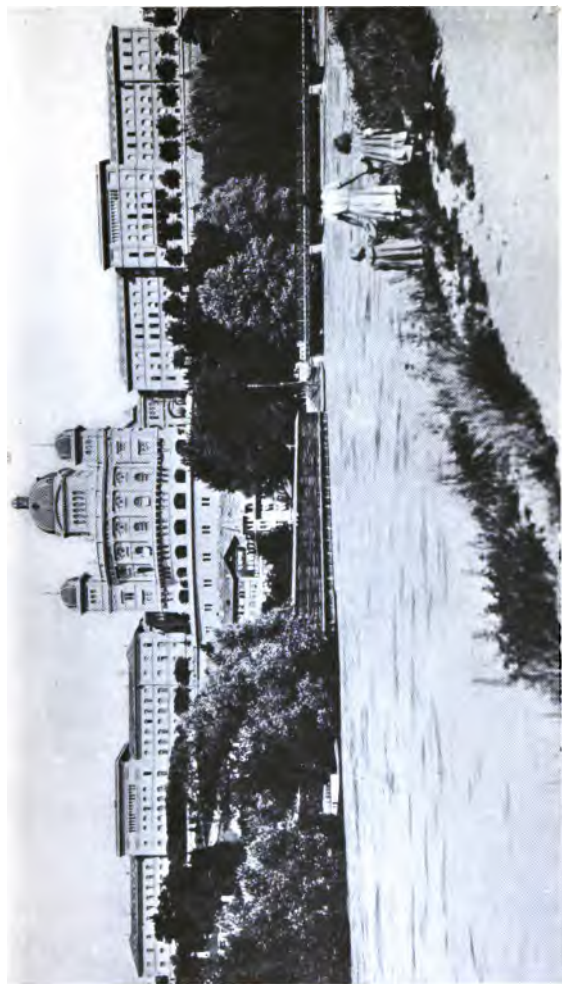
## GOVERNMENT OF SWITZERLAND

In the National Council the professions are represented as follows: lawyers, seventy-eight; journalists, thirteen; teachers, thirteen; physicians, twelve; former preachers, three; authors, one; engineering and architecture, two. Business classes send quotas as follows: manufactures and mechanical, twenty-two; transportation, three; trade, sixteen, of whom four are bankers and two are hotel-keepers; agriculture, sixteen; no occupation stated, ten. From the point of view of economic experience, therefore, the National Council is more broadly representative than the Council of States.

Absence  
of  
system of  
rotation

The Swiss National Council is far more stable in composition than the American House of Representatives. In the latter the average proportion of new members is from a fourth to a third.<sup>1</sup> Only twelve of the 189 members of the present National Council, or 6.3 per cent, are serving for the first time. Seven members had been elected to ten or more triennial terms. The Swiss Council of States also shows a greater average period of service than the Senate of the United States. In 1916 there were twelve representatives in the Swiss Council of States who had been members of that body for twenty years or more, while in the Senate of the United

<sup>1</sup> For the last three Congresses of the United States the figures are as follows: 62d Congress, 32.2 per cent of new members; 63d Congress, 34.3 per cent; 64th Congress, 27.4 per cent.



THE FEDERAL CAPITOL AT BERN



## THE FEDERAL LEGISLATURE

States, with more than double the membership, there were only seven such instances of long-continued service. These figures reveal the strength of the Swiss voters' objection to the principle of rotation in office.

The two branches of the Swiss national legislature are impressively housed in the domed central structure of the federal capitol at Bern. In the large wings to the east and west are located the federal library and several of the executive departments. The seating arrangement in both houses is semicircular, as in continental parliaments generally. There is perhaps a little too much ornamentation in the chamber of the Council of States, which makes it appear even more diminutive than it is, — a veritable toy house among sovereign legislatures. The chamber of the National Council is more severe and restrained in appearance, but it boasts Giron's splendid fresco of Lake Luzern, "The Cradle of the Confederation." From the windows of the National Council and the terrace below one looks out over the deep and narrow gorge of the Aare to the snowy summits of the Bernese Oberland forty miles away, — to the left the sharp peaks of the Grosser Schreckhorn and Finsteraarhorn and in the center the mighty massif of the Eiger, Mönch, and Jungfrau, — surely the most magnificent prospect commanded by any of the world's capitols.

The  
federal  
capitol



## GOVERNMENT OF SWITZERLAND

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## CHAPTER V

### FEDERAL GOVERNMENT BY COMMISSION: THE SWISS EXECUTIVE

**A** PART from the adoption of the federal principle, the greatest achievement of the fathers of the present Swiss constitution was the creation of a separate, permanent, and powerful executive. A legislative body had long existed in the form of a diet, but with the exception of the period of French domination the only central executive authorities were cantonal officials appointed for brief periods to carry the additional burden of national affairs. Not only were these officials frequently changed, but with each such change there was a shift of "Vororte," or capital cities. To this weak, unspecialized, peripatetic system there succeeded in 1848 a strong, distinct executive commission, known as the Bundesrat or Federal Council, located permanently at Bern. Of all Swiss institutions the executive body thus established is the most peculiar. It has nothing in common with the German governmental organ of the same name, and it differs sharply in type from the cabinets of other European countries and the United States. In spite of these peculiarities, however, the Swiss Federal Council has continued to this

Creation  
of a  
strong  
executive

## GOVERNMENT OF SWITZERLAND

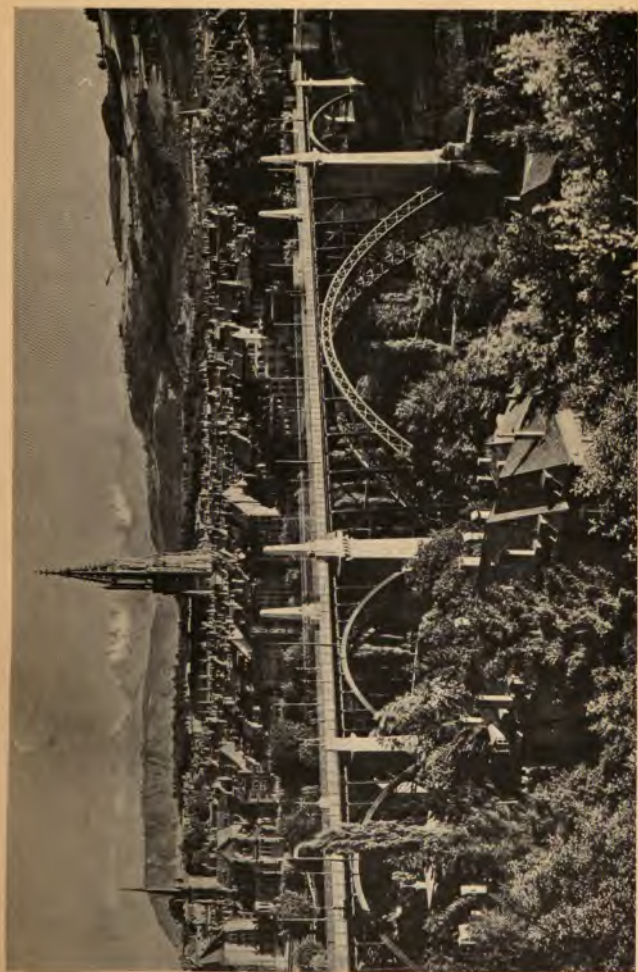
day with few changes of form and considerable accessions of power.

**Why an  
executive  
com-  
mission**

Imbued as they were with a deep aversion to anything savoring of monarchy, it is not strange that the constitution makers of 1848 decided in favor of an executive commission instead of a single president as in the United States. Prior to that time, moreover, the cantonal executives familiar to the Swiss were collegiate in character, as indeed they are still. The number of members of the Federal Council is fixed by the constitution at seven. They are chosen by the Federal Assembly; that is, by a joint session of the Council of States and the National Council immediately after the latter has been reconstituted by a general election. The term of members of the Federal Council is fixed at three years, to coincide with that of the National Council. Vacancies occurring in the Federal Council are also filled by the Federal Assembly for the remainder of the unexpired term.

**Eligibility**

According to the constitution any Swiss citizen eligible to the National Council may be elected a member of the Federal Council. Not more than one member, however, can be elected from the same canton. To these extremely brief and easygoing provisions of the constitution a further restriction has been added by law: "Persons related by blood or marriage without limit in the direct line and up to and including the fourth degree in the collateral line, husbands



PANORAMA OF BERN

3

## FEDERAL GOVERNMENT BY COMMISSION

who have married sisters, and also persons connected by adoption, may not at the same time be members of the Federal Council. . . . Whoever enters by marriage into any such relationship thereby gives up his office.”<sup>1</sup> This ironclad rule, of which, by the way, there are a number of counterparts in Swiss public law, is redolent of the old hatred of the close oligarchies of earlier days.

More important in practice than these constitutional and legal rules are certain customs that have grown up in connection with the choice of the Federal Council. Although not required by the constitution, it is the almost invariable practice to select members of the executive commission from the National Council and the Council of States. For a considerable period following the adoption of the constitution of 1848, members of the latter were preferred for promotion, but this is no longer the case. In the Federal Council as at present constituted,<sup>2</sup> only two of the members were advanced from the Council of States, the remaining five coming from the other house. By tradition also the two largest cantons—Zürich and Bern—are considered to be entitled to permanent repre-

<sup>1</sup> *Bundesgesetz über die Organisation der Bundesverwaltung* of March 26, 1914; A. S. XXX, 292.

<sup>2</sup> Excepting M. Gustav Ador (see Chapter XII), members of the recent Bundesrat were elected December 17, 1914, to hold office from January 1, 1915, to December 31, 1917.

## GOVERNMENT OF SWITZERLAND

sentation on the Federal Council. The remaining seats are distributed among the smaller cantons, one or two usually going to those in which French or Italian is the predominant language.

### Term

Although the term of members of the Federal Council is fixed at three years, there is nothing in the constitution to prevent their reëlection. And, indeed, it is the recognized political custom, to which there have been only two exceptions, to continue members in office as long as they wish to serve. When vacancies do occur by death or resignation, they are generally filled by the election of a man from the same canton or the same linguistic division of Switzerland, and also from the same political party unless it has declined in strength. Under these circumstances a member may normally expect to serve several terms, and the Federal Council as a whole is always certain to contain men of ripe political experience. The present executive commission is exceptional in that four vacancies had to be filled in 1911 and 1912. Of its members, however, Herr Eduard Müller of Bern has served continuously for twenty-one years, and Herr Ludwig Forrer of Zürich for thirteen years. Terms of thirty-two, twenty-seven, and twenty-five years are on record. It should be remembered that Federal Councilors ordinarily serve from ten to fifteen years in the National Council or Council of States before being advanced to the Bundesrat. Moreover, nearly all of them have

## FEDERAL GOVERNMENT BY COMMISSION

been members of their cantonal legislature, or have held administrative or judicial offices in their cantons.

Each year the Federal Assembly designates one of the members of the Federal Council to act as chairman of the latter body.<sup>1</sup> As such he enjoys the title of Federal President, although apart from presiding over the meetings of the Federal Council he possesses few powers of any importance that are not shared equally by his colleagues. By law the president represents the federation at home and abroad.<sup>2</sup> He has charge of the conduct of the business of the executive commission and makes a preliminary examination of matters presented by the various departments for the consideration of that body as a whole. The president also inspects the conduct of federal administration in general, and takes care that matters handed over to the various departments are duly acted upon. The Federal Council may authorize the president to act in its name in affairs of a purely formal or unimportant character. In urgent cases he may be empowered by the Federal Council to take action in the name of the latter, with the understanding, however, that whatever he does must be submitted later to the Federal

The  
Federal  
Presi-  
dent

<sup>1</sup> For 1918, Dr. Felix Calonder of Trins was chosen Federal President.

<sup>2</sup> *Bundesgesetz über die Organisation der Bundesverwaltung* of March 26, 1914; A. S. XXX, 292.



## GOVERNMENT OF SWITZERLAND

Council for its approval. It will be observed that nearly all the functions thus conferred by statute upon the Swiss Federal President are in the nature of services which he can perform most conveniently for the executive commission, rather than powers which he exercises over that body.

From among the Federal Councilors a vice president is chosen at the same time and in the same manner as the Federal President.<sup>1</sup> During his year of office his only duty as vice president is to take the place of the president when the latter is absent or incapacitated. As members of the Federal Council, both the president and the vice president retain the headship of an administrative department while occupying these temporary offices. Although not required by the constitution, it is the custom to advance the vice president of one year to the presidency during the year following. As a natural but rather curious result of this custom, there is always considerable interest in Swiss political circles as to who the next vice president is to be but none at all as to who is to be the next president. It should be observed that the constitution does not prohibit absolutely a second term as Federal President, but only a second *consecutive* term. As a matter of fact, Federal Councilors with long terms of service have been honored thus repeatedly. One of the present Federal

<sup>1</sup> For 1918, Dr. Eduard Müller of Nidau was elected vice president.

## FEDERAL GOVERNMENT BY COMMISSION

Councilors has been president three times, and another twice.<sup>1</sup>

It is the custom to ridicule the office of president as at present constituted in Switzerland. One American commentator entitled his chapter on this subject: "A President of No Great Importance." Considered separately, of course, the powers of the office are so slight as to afford some justification for this attitude. It should be remembered, however, that the Swiss president is at the same time a member of the Federal Council, — a member, moreover, who has gained prestige by some years of service in that important capacity. He is also a party leader of prominence and as such enjoys the confidence of a numerous following. The combination of his office with the portfolio of foreign affairs, which has been customary at various times in the past and became the practice again on January 1, 1918, also enhances the prestige of the president. Even when these two offices were not united it was his function, as president of the Federal Council, to receive the ambassadors and ministers of foreign states.<sup>2</sup> In the same capacity he is given precedence and becomes the recipient of the highest ceremonial honors at national

Importance of federal presidency

<sup>1</sup> Herr Eduard Müller was president in 1899, 1907, and 1913; Herr Ludwig Forrer in 1906 and 1912.

<sup>2</sup> Chiefs of state of foreign powers are received by the Federal Council as a whole, however. Cf. Lemperière, "Le Pouvoir exécutif en Suisse," p. 358.

## GOVERNMENT OF SWITZERLAND

festivals and other public occasions. While not to be compared for an instant with the presidency of the United States so far as actual power is concerned, the federal presidency of Switzerland nevertheless commands considerable influence and is the most distinguished office open to political striving in that country. As such it is sought after as the crowning reward of a long career of public service; as such also it commands in high measure the respect of the Swiss people as a whole.

By a provision of the constitution (Art. 97), members of the Federal Council are forbidden to hold any other office either in the service of the federation or of a canton, or to engage in any other pursuit or profession. By law they cannot even permit third persons to carry on a business for them, nor can they act as directors of a business corporation.<sup>1</sup> They receive a salary from the federal treasury, which has been increased several times since the Federal Council was established, but which, under the scale fixed by a federal resolution in 1912, amounts to only 18,000 francs annually. The Federal President receives an additional 2000 francs annually.

Powers  
of the  
Bundesrat

According to the Swiss constitution (Art. 95), the Federal Council is "the supreme directive and executive authority of the confederation."

<sup>1</sup> *Bundesgesetz über die Organisation der Bundesverwaltung* of March 26, 1914; A. S. XXX, 293.

## FEDERAL GOVERNMENT BY COMMISSION

From the sweeping wording of this clause one might infer that it possessed a much larger share of executive discretion than is the case. Authorities agree that the Federal Council is exclusively empowered to take administrative action in all cases where the federal constitution or legislation has not expressly provided otherwise. In addition to the sweeping grant of executive power quoted above, another article of the constitution (Art. 102) presents an extended list of specific administrative tasks which are confided to the Federal Council. In nearly all particulars this detailed statement is merely an administrative parallel to the powers of the federal legislature.<sup>1</sup> It will be recalled that much federal legislation is intrusted to the cantons for enforcement. While the Federal Council is thus relieved of direct responsibility for the execution of such laws, it must nevertheless supervise the action of the cantonal authorities in administering them. For its whole conduct of business the executive is responsible to the federal legislature. It must render detailed reports of all its transactions, and these are subjected to the most thorough scrutiny and discussion by the Federal Assembly. The latter cannot take administrative affairs into its own hands, but it may and frequently does issue binding instructions to the Federal Council with regard to such matters.

<sup>1</sup> See Chapter IV.

## GOVERNMENT OF SWITZERLAND

**Postulates** Often this is done in the form of a motion known as a "postulate." In tone these postulates range from a polite request to a curt demand; in subject matter from the most important to the most trivial topics.<sup>1</sup> All together, the number of postulates hanging over the heads of the Federal Councilors at any one time must be considerable, and the two houses keep a calendar of them so that none may be overlooked. If a motion in this form should not secure results, the Federal Assembly may employ the more imperative form of a federal resolution, to which the executive has no choice but to yield obedience.

In any constitutional issue involving the final location of power, decision would rest with the legislative branch. This is so well understood that open resistance has never been resorted to by the Federal Council, nor has the parliament ever found cause that would justify it in an effort to upset the executive. From the purely constitutional point of view, therefore, Dupriez was quite correct in his assertion that in Switzerland "the ministers do not even have the choice

<sup>1</sup> Postulates are employed not only in administrative matters, but also to ask the Federal Council to prepare and introduce bills on given subjects. A typical postulate presented in the National Council, March 29, 1917 (but overwhelmingly voted down by that body), reads as follows: "The Federal Council is invited to take no step of any sort toward peace, and to take no part in peace negotiations between belligerents, without notifying the Federal Assembly in advance and receiving authorization to do so from the latter."

## FEDERAL GOVERNMENT BY COMMISSION

between submission and dismissal; they submit and obey with good grace.”<sup>1</sup>

Although constitutionally the Federal Council is subordinate to the Federal Assembly, in practice this relationship is not infrequently reversed. Members of the Federal Council enjoy a great influence over the legislature, partly because of their prestige as party leaders, partly because of the experience and special knowledge which they are able to gain through their official position. The large appointive powers of the Federal Council and its influence in favor of locating public works in one canton rather than another are also said to lead to a certain subservience on the part of legislators.<sup>2</sup> Finally, because of its small size and compact organization the Federal Council possesses a marked tactical advantage over the two houses, with their more numerous membership and diffuse organization. In the opinion of one of the greatest authorities on Swiss politics, “the influence of the federal executive power has grown during the fifty years of its existence to such a degree as to make of it the preponderant factor in the federal state. Upon the intelligence, foresight, and activity manifested by the Federal Council in our politics, internal and external, has de-

Influence  
of  
Bundes-  
rat

<sup>1</sup> “Les Ministres dans les principaux Pays d’Europe et d’Amérique,” II, p. 181.

<sup>2</sup> Cf. Pflüger, “Handspiegel für Nationalrats-Wähler und Nationalrats-Kandidaten,” p. 16.

## GOVERNMENT OF SWITZERLAND

pended above everything else the peaceful development of public life as a whole in the confederation and the cantons.”<sup>1</sup>

War and  
the Swiss  
executive

The foregoing paragraphs represent an effort to describe the somewhat involved balance of power between the Swiss legislative and executive as it existed prior to August, 1914. With the outbreak of war a quick and sweeping transfer of authority was effected by the passage of a federal resolution providing in part that:

“the Federal Assembly confers unlimited power (*unbeschränkte Vollmacht*) upon the Federal Council to take all measures necessary to the security, integrity, and neutrality of Switzerland, and to protect the credit and economic interests of the country, especially including the assurance of its food supply. For this purpose the Federal Council shall possess unlimited credit to meet expenses. It is especially authorized to conclude all necessary loans. The Federal Council shall account to the Federal Assembly at its next session with regard to its employment of the unlimited powers hereby conferred upon it.”<sup>2</sup>

It is too early to attempt to estimate the extent to which the relations of legislative and executive in Switzerland have been affected by this resolution. Undoubtedly it enabled the Federal Council to act in a large number of cases with greater decisiveness and speed. But for everything that it does it must ultimately render account to the legislature. And there have

<sup>1</sup> Hilty, quoted by Lemperière, *op. cit.*, p. 24.

<sup>2</sup> *Bundesbeschluss* of August 3, 1914, A. S. XXX, 347.

## FEDERAL GOVERNMENT BY COMMISSION

been many evidences of the jealousy with which the two houses regard the exercise of the powers which they themselves granted to the Federal Council. It seems likely, therefore, that the return of peace will witness the early repeal of the "Vollmacht" resolution.

In addition to its numerous administrative duties, the Federal Council is intrusted with legislative functions of great importance. Its members have the right to speak, but not to vote, in both houses of the Federal Assembly, and also the right to make motions on the subject under consideration. They are subject to interpellation in either house, but the process is on the whole more akin to the simple question as employed in other parliaments. It differs from the French interpellation in that it is not closed by a motion to pass to the order of the day, expressing confidence or want of confidence. A general discussion may follow only if the house so decides.<sup>1</sup>

The Federal Council has the right of introducing bills into the Federal Assembly. As a matter of fact most of the important measures of federal legislation, including the budget, are drawn up by the Federal Council, either upon its own motion or upon request by the houses. It does not, however, possess the veto power. At each regular session of the legislature the Federal Council submits an extremely detailed account of its administration, together with a

<sup>1</sup> Lemperière, *op. cit.*, p. 19; Dupriez, II, 232; Lowell, I, p. 119.



## GOVERNMENT OF SWITZERLAND

statement of federal receipts and expenditures. At the same time it recommends such measures as it thinks desirable for the promotion of the common welfare. It also makes special reports at any time upon request of either or both houses.

Besides these broad administrative and legislative functions, the Federal Council formerly possessed, subject to appeal to the Federal Assembly, considerable judicial power both in constitutional cases and in the field of administrative law. In 1893, however, its power in the former field was transferred to the Federal Court.<sup>1</sup> A constitutional amendment adopted October 25, 1914, provided for the creation of a federal administrative and disciplinary court which will take over cases of this character.

In addition to the plenitude of purely federal powers conferred upon it, the executive is charged with a number of important duties which bring it into direct contact with cantonal authorities. These include the enforcement of the guarantee of cantonal constitutions, the execution of compromises or arbitral decisions upon disputes between cantons, the examination of treaties entered into by cantons, the examination of such cantonal laws and ordinances as must be submitted for its approval, and the exercise of supervision over such departments of the cantonal administration as are placed under its control. In case of the breakdown of a cantonal

<sup>1</sup> *Bundesgesetz* of March 22, 1893.

## FEDERAL GOVERNMENT BY COMMISSION

government, necessitating federal intervention, by far the greater part of the burden of restoring order falls upon the Federal Council.

Although the business of the Federal Council is distributed among its members by departments, this distribution, according to the constitution (Art. 103), is solely for the purpose of facilitating the examination and dispatch of business. Decisions when finally arrived at emanate from the authority of the Federal Council as a body. While in practice there are numerous exceptions to this principle, it is important to note the legal rules under which the Swiss executive carries on its collective business. The constitution itself stipulates that a quorum of the Federal Council shall consist of four members (Art. 100). It is customary to hold two regular meetings a week, but other meetings may be called if pressure of business makes it necessary. Members may not be absent without excuse.<sup>1</sup> The president may give leave of absence for a week, but for longer periods the consent of the Federal Council is required. Sessions of the executive commission are secret. Motions are decided by a *viva voce* vote, except in the case of appointments, when by special order written ballots may be used. A majority of those voting decides, but to be effective every resolution must

Solidarity  
of the  
Bundes-  
rat

<sup>1</sup> This and the following rules may be found in the *Bundesgesetz über die Organisation der Bundesverwaltung* of March 26, 1914; A. S. XXX, 292.

## GOVERNMENT OF SWITZERLAND

be supported by at least three members. For the reconsideration of a motion already passed the votes of four members are necessary. The president votes together with the other members, but in case of a tie his vote is counted double.

Small as it is, the Federal Council possesses committees on a few matters of special importance. Two of these are provided for by law, one on Customs Duties and Commercial Treaties, the other on Railroads, — each being composed of the heads of the three or four departments most closely concerned. Other committees may be appointed if the Federal Council so desires.

**Executive  
depart-  
ments**

At the beginning of every year (and also after a vacancy has been filled by a supplementary election), the Federal Council appoints each of its members to the headship of one of the executive departments. At the same time each member is named substitute chief of a second department, of which he is expected to take charge in case his colleague at the head of it is temporarily incapacitated. For the year 1916, departments and assignments were as follows:

DEPARTMENT	CHIEF	SUBSTITUTE HEAD
Political	Hoffmann	Decoppet
Interior	Calonder	Müller
Justice and Police	Müller	Calonder
Military	Decoppet	Hoffmann
Finance and Customs	Motta	Schulthess
National Economy	Schulthess	Forrer
Posts and Railways	Forrer	Motta

## FEDERAL GOVERNMENT BY COMMISSION

The titles of most of these departments are self-explanatory. With regard to the rather vaguely named "political department," however, it should be stated that it includes not only foreign affairs, but also a number of domestic concerns such as citizenship, intercantonal charity, federal election laws, intercantonal boundary lines, and emigration laws. There is an old controversy as to the assignment of this post. Originally it was given to the president, and thus changed hands annually. From 1887 to 1895, and again from 1914 to 1917, the same head of the political department was continued from year to year regardless of the changes in the presidency. This system not only gave greater continuity to the conduct of foreign affairs, but also avoided an annual shake-up in the assignment of other departments. Federal Councilors were thus enabled to acquire an extended experience and become specialists each in his own line. Precisely on these grounds, however, the system of a continuous control of the political department was attacked. It was urged that a specialist dealing permanently with foreign affairs might be tempted to act on his own account and to disregard his constitutional duty of consulting the Federal Council as a whole. In 1917, this objection received a sensational illustration in the Grimm-Hoffmann affair.<sup>1</sup> As a result, a return to the system of

<sup>1</sup> See Chapter XII.

## GOVERNMENT OF SWITZERLAND

annual changes in the headship of the political department has been ordered.<sup>1</sup>

With regard to other departments, it is interesting to note that the portfolio of the interior includes, in addition to the usual duties coming under this heading, important bureaus dealing with public works and engineering inspection. An interesting bureau of the department of justice and police is devoted to the protection of intellectual property such as patents, trademarks, industrial models, copyrights; also to the drafting of treaties with foreign countries on these subjects. In the department of finance and customs one of the bureaus is charged with the alcohol monopoly, and another with the statistical service of the country. The department of national economy is divided into bureaus of industry and trade, social insurance, health, agriculture, and a veterinary office.

The  
appointive  
power

The Federal Council makes all appointments in the national service with the exception of those offices which are intrusted by law to the Federal Assembly, the Federal Court, or other authorities. Under the last-mentioned heading there were few positions, until the railroads of the country were taken over by the state and placed under

<sup>1</sup> *Bundesbeschluss* of June 26, 1917, which took effect January 1, 1918. By special arrangement, M. Ador, who was elected to fill the vacancy caused by Herr Hoffmann's resignation, acted as head of the political department until that time.

## FEDERAL GOVERNMENT BY COMMISSION

specific administrative authorities. Owing to the practice of depending on the cantons to execute many federal laws, the executive personnel of the Swiss central government is not so large even in proportion as that of most other governments. Nevertheless, the appointive power of the Federal Council is considerable, and in its exercise large discretion is permitted. By law civil service examinations are required for telegraphers and higher-grade postal employees. Competitive tests are usually employed also in the case of inferior employees, but the results are not binding on the Federal Council, which may regard them merely as evidence bearing upon the qualifications of applicants. In spite of this somewhat loose procedure, the spoils system is virtually unknown in Switzerland. Complaints are sometimes heard to the effect that too many offices in the central bureaus are given to German-speaking citizens, but in general it is conceded that the Federal Council secures civil servants of marked ability and honesty. Salaries are so low and duties so exacting that they would frighten off even the typical American office seeker if he existed in Switzerland, which, happily for that country, does not seem to be the case.

Swiss federal employees of the lower ranks are employed without fixing definite terms, which in practice means that they hold office during good behavior. Functionaries of higher grade are

## GOVERNMENT OF SWITZERLAND

appointed for three-year periods, but reappointment is almost certain to follow upon satisfactory service. Discipline is maintained by means of reprimands, fines not exceeding fifty francs, and suspension. Incompetence may result in dismissal at any time, but the accused official must first be heard in his own defense and afterwards supplied with a statement of the action taken and the reasons upon which it was based.<sup>1</sup>

The  
Chancellor

Under the special supervision of the Federal Council, but not a part of it, the Swiss constitution provides for a Federal Chancellory at the head of which is placed an official known as the Chancellor (*Kanzler, Chancelier*), with a salary of 13,000 francs annually. Prior to 1848, the Chancellor was the only permanent administrative officer of the confederation. It was his duty to move with the central government from one capital city to another, carrying along with him official records and the seal of state. At present, of course, his office is located permanently at Bern. The Chancellor is chosen by the Federal Assembly at the same time and for the same term as the Federal Council.

Historically, and also in other countries at the present time, the title of Chancellor is associated with such magnificent honors and substantial functions that one must take care not to overemphasize the importance of the Swiss

<sup>1</sup> Dupriez, *op. cit.*, II, 236-239.

## FEDERAL GOVERNMENT BY COMMISSION

official of this name. As a matter of fact, his functions are similar in a general way to those of the secretary of state of an American state, and his political significance is certainly no greater. Briefly, it is the duty of the Chancellor, as stated in the constitution, to act as secretary of the executive commission and also of the legislative branch of the government. Although, as we have seen, his office is under the "special" supervision of the Federal Council, it is also in part the servant of each of the two houses and under their supervision as well. Among the detailed duties of the Chancellor as stated in the organization law,<sup>1</sup> are included much stenographic work; the work of translation, publication, and custody of printed documents; the organization of federal elections and of initiative and referendum votes, and the reception and publication of the results; etc., etc. Laws, federal resolutions, resolutions of the Federal Council, and certain other official orders require the signature of the Chancellor, and also of the Federal President, but merely as an attestation of their genuineness. Neither official can withhold assent to any legal enactment.

Some of the peculiarities of the Swiss Federal Council as compared with the cabinets of other countries have already appeared in the foregoing account of its structure and functions. It may be desirable at this point to note them more in

The  
Bundes-  
rat com-  
pared  
with  
other  
cabinets

<sup>1</sup> Law of March 26, 1914; A. S. XXX, 296.



## GOVERNMENT OF SWITZERLAND

detail.<sup>1</sup> In the first place, the Federal Council does not stand simply as the representative of some other executive authority in the state. The powers which it possesses are its own, conferred upon it by the constitution, not powers which it exercises on behalf of a monarch or a president. Secondly, the Swiss executive commission has no prime minister. The president's special powers are neither sufficient, nor were they meant, to confer any such preponderance upon him. He is simply *primus inter pares*.

Bundesrat  
not based  
on a party  
majority

More important than either of the foregoing, however, is the third peculiarity of the Federal Council; namely, that it is not based upon a party majority in the legislative bodies. As a result of the traditional practice of returning for term after term Federal Councilors who wish to continue in service, it has happened that the strength of the various parties in the Federal Council has not corresponded to their strength in the legislature. In 1888, for example, the Liberal Center still held three seats in the executive commission, although in the houses this party had shrunk to a small group. Yet the Radical majority waited until vacancies caused by resignation or death enabled it to increase the number of its adherents in the Federal Council.

Further, the members of the Federal Council

<sup>1</sup> Cf. Dupriez, II, 201; Vincent, pp. 215-218; Adams and Cunningham, pp. 58-60.

## FEDERAL GOVERNMENT BY COMMISSION

are elected not only from different party groups but from party groups fundamentally opposed to each other. Coalition ministries have frequently been formed in other countries which have three or more national parties, but in nearly all such cases the parties which combined to support the cabinet did so largely in order to keep a common enemy out of power. It is also true that under the stress of world war various other European countries have established coalition ministries taking in all the major parties represented in their parliaments. The point of special interest regarding the Swiss practice is that under normal circumstances, and for so long a period now that it has become traditional, the executive commission has contained representatives of all the principal party groups in the legislature, including those which are opposed to the general drift of the majority governmental policy.<sup>1</sup>

The customary objection to a coalition ministry is that while it might secure peace in the parliament, it would do so at the cost of dissension in the cabinet. And, in spite of a generally good *esprit de corps*, it is admitted that there have

Contro-  
versies  
in the  
Bundesrat

<sup>1</sup> In 1891, for the first time, a Catholic Conservative was elected to the Bundesrat by a Federal Assembly in which the Radicals were dominant. Cf. Dupriez, II, 187. On a strictly proportional basis the strength of the Socialists in the legislature is not yet sufficient to justify them in claiming one of the seven seats in the Federal Council.

## GOVERNMENT OF SWITZERLAND

been quite sharp differences of opinion within the Swiss executive, although not more often, apparently, than in the case of cabinets in other countries recruited from a single party. Usually further conference and compromise have smoothed out the controversies in the Federal Council. However, its members are under no compulsion to agree, and at rare intervals the Swiss houses are treated to the spectacle of an executive councilor rising to oppose the argument which has just been made by one of his colleagues. As soon as the Federal Assembly reaches a decision in the matter at issue, the Federal Council bows to the legislative will. If unity is not attained within, it is thus enforced from without the executive commission. Nor does any personal ill feeling ever seem to result from these open clashes between its members.

A fourth peculiarity of the Swiss cabinet, at least prior to the passage of the *Vollmacht* resolution, was its extreme dependence upon the legislative branch. Moreover, this dependence was due not simply to the play of political forces or to tradition, but to constitutional texts which restrain ministerial freedom of action more closely than in any other country. The Bundesrat cannot dissolve the legislature and appeal to the electorate for a decision in its own favor. On the other hand, it is worth noting, although it does not greatly affect the balance of power between them, that the legislative branch cannot

## FEDERAL GOVERNMENT BY COMMISSION

dismiss the executive councilors out of hand. It is true that under an old statute passed in 1850,<sup>1</sup> the latter are held responsible, civilly and criminally, for their acts. An elaborate process is provided to hold them to this responsibility, involving action by both houses and by the Federal Court. So far, however, no occasion has arisen for the employment of the act of 1850. Moreover, members of the Federal Council are not expected to resign because a bill introduced by them, however important it may be, has failed of passage in the Federal Assembly or has been rejected by the people at a referendum vote. They simply drop the matter, or remodel the bill to meet the criticism which has caused its defeat.

Advocates of government by commission usually praise it on the ground that it avoids one-man power and places collective wisdom behind administrative action. Those who are most familiar with the intimate workings of commissions, whether in the national or local sphere, are inclined to suspect that this argument is based more upon appearance than reality. Certainly no executive commission in the world is more strongly enjoined by legal texts to act collectively than is the Swiss Federal Council. Yet in the opinion of one of its most acute observers, "out of every hundred matters submitted [to it], not more than one meets with objections.

How  
far the  
Bundes-  
rat acts  
collec-  
tively

<sup>1</sup> Law of December 9, 1850.

## GOVERNMENT OF SWITZERLAND

However, when a discussion once breaks loose it nearly always takes on serious proportions.”<sup>1</sup>

Pressure  
of work

So great is the burden of work imposed upon the Federal Council that it could not well act otherwise. Particularly is this true during legislative sessions, when in addition to their regular administrative duties the members are overwhelmed with official visits, and with attendance upon sessions of the two houses, of various legislative committees, and of the Federal Council itself. Under the circumstances, the Federal Council simply abdicates in part its collective duties, leaving many important matters in the hands of its individual members. And the latter are themselves forced to rely more and more upon their bureau chiefs, who, of course, owe no direct responsibility to the legislature.

Remedies

Under the stress of war this situation immediately grew intolerable. As a result an amendment to the constitution was adopted, October 25, 1914, which provides that definite matters of business may by federal legislation be transferred for action to the various departments or to subordinate authorities within the departments, care being taken in such cases, however, to preserve the right of appeal to an administrative court.<sup>2</sup> Less than a month afterwards, the Federal Council adopted an exhaustive resolution which defines in great detail those

<sup>1</sup> Dupriez, II, 195.

<sup>2</sup> Revising Art. 103; A. S. XXX, 659.

## FEDERAL GOVERNMENT BY COMMISSION

matters of business which may be attended to independently by departments or subordinate officials.<sup>1</sup>

For a chronic condition of overwork the most obvious remedy is an increase of the working force. Long before the outbreak of the present war, proposals were made to raise the number of Federal Councilors to nine. With an increase of the latter number, the additional advantage would be gained that it would be possible to assign one seat permanently to the Italian-speaking, and two seats to the French-speaking, sections of Switzerland. Although the Federal Council has remained fixed at seven members ever since its creation, there is manifestly nothing sacred in that number.<sup>2</sup> However, any increase in its size would mean a decrease in compactness and effectiveness, particularly for collective work. As part of a constitutional amendment brought forward by initiative petition in 1900, it was proposed to add two additional members to the Federal Council, but the whole amendment was overwhelmingly defeated by popular vote on November 4 of that year. Under the growing pressure of war burdens, however, the Federal Council itself decided on May 11, 1917, to sub-

Increase  
in  
size of  
Bundes-  
rat

<sup>1</sup> *Bundesratsbeschluss* of November 17, 1914; A. S. XXX, 602. This resolution is thirty-eight pages in length.

<sup>2</sup> Cf. T. Curti's clever discussion of "Die heilige Zahl," pp. 102-108 of his "Im Bundesratshaus."

## GOVERNMENT OF SWITZERLAND

mit to the legislative houses an amendment to the constitution increasing its membership from seven to nine. By the resolution of June 26 of that year it transferred to the Department of National Economy the commercial division of the Political Department, thereby considerably reducing the burdens of its hardest-worked department.

Election  
of  
Federal  
Council  
by  
popular  
vote  
proposed

Among other reforms election of the Federal Council by popular vote, instead of by the Federal Assembly as at present, has been advocated frequently in Switzerland. The democratic groups which favor this change believe that it would arouse more interest in federal politics than the election of legislators by districts, which, with the exception of initiative and referendum votes, are the only opportunities now afforded the people to express themselves upon national issues. Advocates of popular election also point out that Federal Councilors who owed their mandates directly to the people could be expected to develop more independence in their relations with the all-powerful legislature. Partisans of the existing system oppose the change for precisely the same reasons, fearing clashes and deadlocks between the executive and legislative branches. Further, they deny that men of the requisite administrative ability could be obtained by direct popular vote. On November 4, 1900, the issue was presented to the people by an initiative petition, but was

## FEDERAL GOVERNMENT BY COMMISSION

voted down by a large majority.<sup>1</sup> Nine years later a similar proposal came up in the Federal Assembly, but was rejected by both houses.

More fundamental than any of the foregoing suggestions for the reform of the Federal Council is the proposal that Switzerland should adopt the American institution of a single president, elected by and responsible to the whole people. While this idea has not as yet invaded the realm of practical politics, it has attracted attention among scientific students of Swiss institutions. One of the most eminent of these believes that the reform would result "in a more cordial union between the citizens of different parts of the country; in better-defined and more independent relations of the public powers among themselves; in a more intimate solidarity between the authorities and those whom they represent;" and finally "in a régime less anonymous, less elusive, less bureaucratic."<sup>2</sup> There is an obvious distinction between mere administration and the executive function, properly conceived. Execution involves a broad view of the political

Proposal concerning a single president for Switzerland

<sup>1</sup> The election of the Federal Council was to take place without reference to cantonal lines,—that is, the whole country counted as a single election district. At the first ballot an absolute majority was necessary for success. If under this condition any places remained unfilled, a second ballot was to be taken, at which a plurality sufficed. Candidates who had not presented themselves at the first ballot were free to do so at the second.

<sup>2</sup> Rappard, "Notre Grande République Sœur," p. 38.



## GOVERNMENT OF SWITZERLAND

situation as a whole, unified control of all governmental powers of action, and their prompt coördination to a single end. The Swiss form of organization may have every administrative virtue, but can it function executively in the broad sense of the word? Of course if Switzerland accepted this plan, it would involve the reduction of the Federal Council to the position of the American cabinet, its members becoming the appointees of the president and responsible directly to him.

Efficiency  
of the  
Bundesrat

Apart from all criticisms and suggestions for reform, however, it is generally conceded that the Swiss executive has developed high efficiency within the limits of its powers and opportunities. In the opinion of two well-known English students, "the members of the Federal Council yield to no other government in Europe in devotion to their country, in incessant hard work for a poor salary, and in thorough honesty and incorruptibility. A diplomatist who knew them well and appreciated their good qualities, aptly remarked that they reminded him of a characteristic industry of their own country — that of watch-making. For, having to deal with very minute and intricate affairs, their attention is unremittingly engaged by the most delicate mechanism of government, by the wheels within wheels of federal and cantonal attributes, by the most careful balancing of relations between contending sects and churches, and by endeavors

## FEDERAL GOVERNMENT BY COMMISSION

to preserve the proper counterpoise between two (French and German), not to say three (the third being Italian) nationalities."<sup>1</sup>

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<sup>1</sup> Adams and Cunningham, "The Swiss Confederation," p. 38.

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## CHAPTER VI

### FEDERAL LEGISLATION: INITIATIVE AND REFERENDUM

The Swiss  
people  
as a  
"third  
house"

A DESCRIPTION of the legislative and executive branches of the federal government by no means exhausts the list of agencies which coöperate in the process of law-making. The Swiss people also have a part to play through the initiative and referendum, and they have insisted on playing it so often and with such effect that they are sometimes referred to as constituting a "third house." Switzerland's experience with these agencies of direct popular rule covers a longer period of continuous activity and a wider field of legislation than that of any other country. To Americans this experience is of exceptional interest because the movement which, beginning in 1898, has resulted in the rapid extension of the initiative and referendum to so many of our state and local governments, undoubtedly owed its inspiration to Swiss example. In the words of Professor Rappard, it was a "case of democratic contagion."<sup>1</sup>

<sup>1</sup> *Annals American Academy*, 43:110 (September, 1912). On the extension of the initiative and referendum in the United States, consult A. N. Holcomb, "State Government in the United States," Ch. XIII.

## FEDERAL LEGISLATION

Although commonly linked together in popular speech, the initiative and referendum are not political Siamese twins. Of course each is based upon the exercise of popular power. Logically, however, the two are easily distinguishable, and while often coexisting in practice they may exist separately. Reduced to its lowest terms, the referendum is a device whereby the electorate may veto an act which a legislative body has already passed. Essentially the initiative is a device whereby the electorate may enact legislation against the will of the legislature. The referendum has been compared to a shield with which the people wards off undesirable legislation; the initiative to a sword with which it "cuts the way for the enactment of its own ideas into law." In its effects the former is a bit in the mouth, the latter a spur in the flanks, of the legislative steed.

The Swiss federation possesses (I) the referendum in obligatory form — that is, taking effect without petition — for all amendments to the constitution; (II) the initiative for constitutional amendments only, upon petition of 50,000 voters; and (III) the optional or facultative referendum — that is, taking effect upon petition of 30,000 voters or of eight cantons, applying to the more important acts passed by the national legislature.

Forms of  
Swiss  
federal  
initia-  
tive and  
referen-  
dum

# GOVERNMENT OF SWITZERLAND

## I. *The Obligatory Constitutional Referendum*

Origin  
of the  
constitu-  
tional  
referen-  
dum

In its modern form the constitutional referendum was first employed in the United States, beginning with the draft submitted to the people by the General Court of Massachusetts in 1778. From America it passed to France, and from the latter country to Switzerland, where it was first used in connection with the Act of Mediation (1803). During the revolutionary movement of the thirties, several cantons adopted this principle. The federal constitution of 1848 and the revision of 1874 were both submitted to popular vote. By a constitutional provision introduced into the first of these documents and continued in the second, cantonal constitutions must be accepted by the people in order to receive the federal guarantee.<sup>1</sup>

Total and  
partial  
revision

The federal constitution provides for both total and partial revision. It does not, however, distinguish between the two, nor in logic is such a distinction easy to make. Total revision may be brought about in three different ways, but no action of this sort has been taken since 1874.<sup>2</sup> Since the amendment of 1891, it is not likely that these older and more cumbersome methods of total revision will be employed again. Partial revision may take place in two ways, so that

<sup>1</sup> Const. 1848, Art. 6, lit. c; also same in Const. of 1874.

<sup>2</sup> Constitution of 1874, Arts. 118-123 incl. Cf. also Deploige, "Referendum in Switzerland," pp. 128 *et seq.*

## FEDERAL LEGISLATION

all together there are five different methods of amending the Swiss federal constitution. Of the methods of partial amendment one is by the initiative, to be discussed later. The other, which is the simplest and most frequently employed of all, provides for the passage of a constitutional amendment in the same manner as an ordinary federal law; namely, by vote of the two houses sitting separately, the amendment to take effect, however, only after it has been approved by a majority of Swiss citizens voting thereon and also by a majority of cantons. The vote of each canton is determined by the majority of the popular vote within its territory. Half cantons are counted separately as such; hence a total cantonal vote of  $11\frac{1}{2}$  constitutes a majority.

All amendments offered to the Swiss federal constitution by this method are presented in the following table, together with the popular and cantonal vote thereon, the latter being printed in boldface type immediately beneath the former.

During the forty-three years of experience under the constitution of 1874 twenty-one amendments were passed by the Swiss federal legislature, all but five of which were accepted upon referendum by the people and the cantons. Only two amendments were added to the constitution of the United States during the same period. The tendency of the Swiss people to reject amendments proposed by the national legislature seems to be growing less. During

# GOVERNMENT OF SWITZERLAND

## OBLIGATORY REFERENDA Swiss Constitutional Amendments, 1874-1917

Date	Measure	Vote		Result A, accepted R, rejected
		Aff.	Neg.	
1879, May 18	Permitting capital punishment.....	200,485 15	181,588 7	A
1882, July 30	Extending federal power over patents.....	141,616 7 1/2	156,658 14 1/2	R
1885, Oct. 25	Permitting creation of alcohol monopoly.....	230,250 15	157,463 7	A
1887, July 10	Extending federal power over patents.....	203,506 20 1/2	57,862 1 1/2	A
1890, Oct. 26	Workmen's insurance against sickness and accidents...	283,228 20 1/2	92,200 1 1/2	A
1891, July 5	Partial revision of constitution by initiative.....	183,029 18	120,599 4	A
1891, Oct. 18	Bank-note monopoly.....	231,578 14	158,651 8	A
1894, March 4	Extending federal legislative power in the field of industry.....	135,713 8 1/2	158,492 13 1/2	R
1895, Sept. 29	Creating federal match monopoly.....	140,174 7 1/2	184,109 14 1/2	R

# FEDERAL LEGISLATION

1895, Nov. 3	Centralizing army control.....	195,178 4 1/2	269,751 17 1/2	R
1897, July 11	Extending federal forest police.....	156,102 16	89,561 6	A
1897, July 11	Pure food legislation.....	162,250 18 1/2	86,955 3 1/2	A
1898, Nov. 13	Providing for uniform civil code.....	264,933 16 1/2	101,820 5 1/2	A
1898, Nov. 13	Providing for uniform criminal code.....	266,713 16 1/2	101,712 5 1/2	A
1902, Nov. 23	Permitting federal subventions to cantonal primary schools.....	258,561 21 1/2	80,429 1 1/2	A
1903, Oct. 25	Restricting sale of liquors; abolishing "two liter inns".....	156,777 4	228,094 18	R
1905, March 19	Revision patent clause of constitution.....	199,187 21 1/2	83,935 1 1/2	A
1908, July 5	Permitting uniform federal industrial legislation.....	232,457 21 1/2	92,561 1 1/2	A
1913, May 4	Combating infectious diseases.....	169,012 16 1/2	111,163 4 1/2	A
1914, Oct. 25	Distribution business of Federal Council, creating federal administrative court.....	204,394 18	123,431 4	A
1915, June 6	Permitting special temporary war tax.....	452,117 22	27,461 0	A
1917, May 13	Permitting federal stamp tax.....	190,288 14 1/2	167,689 7 1/2	A



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the first half of the period under consideration (1874 to 1895 inclusive) they vetoed four out of ten; during the second half (1896 to 1917 inclusive), only one out of twelve.

### Classi- fication of amend- ments

Classification of so extended a list of legislative projects is not easy. In general, however, it may be said that amendments dealing with economic and financial subjects were more numerous than those of any other category. To the former group belong the three patent amendments, the first rejected in 1882, the second and third accepted in 1887 and 1905 respectively; the provisions for the establishment of the alcohol monopoly, accepted in 1885; of the banknote monopoly, accepted in 1891; and of the match monopoly, rejected in 1895; and finally the forest police amendment, accepted in 1897. Since the outbreak of the European war two other amendments of this character have been adopted: one authorizing a special temporary war tax, accepted in 1915; the other permitting the federal government to levy stamp taxes, accepted in 1917.

Second in number only to the foregoing are the measures falling within the closely related field of social economics. These include workmen's insurance against sickness and accidents, accepted in 1890; the trade union amendment, rejected in 1894; the pure food amendment, accepted in 1897; the provision for school subventions, accepted in 1902; uniform federal

## FEDERAL LEGISLATION

industrial legislation, accepted in 1908; and the infectious diseases amendment, accepted in 1913.

Three amendments fall within the group of governmental and political changes: the provision for partial revision of the constitution by initiative, accepted in 1891; the attempt to centralize army control, which failed in 1895, but in the form of a statute was accepted with modifications by the optional referendum in 1907; and the amendment distributing the business of the Federal Council and creating a federal administrative court, accepted in 1914.

Two questions primarily of a moral character were also disposed of in this manner. One of these, dealing with the sale of liquor, was defeated in 1903; the other revived the death penalty, which had been abolished by the constitution of 1874. Shortly after the latter date, however, a series of shocking murders so aroused the people that an amendment permitting the reintroduction of capital punishment passed both houses of the Federal Assembly and was approved in 1879, although by a majority of less than 20,000 votes. In order to become effective this action required amendment, in the same manner, of the various cantonal constitutions. As such action has been taken by a small number of cantons only, the death penalty still remains suspended throughout the greater part of Switzerland. It should be noted that the amendment of 1879, restoring the death penalty, expressly provided that

## GOVERNMENT OF SWITZERLAND

it should not be pronounced for a political offense. Finally, two amendments of November 13, 1898, which do not fall readily within the above classification, have proved to be of the utmost practical importance. One of these provided for a uniform civil code, the other for a uniform criminal code.<sup>1</sup>

### II. *The Constitutional Initiative*

The initiative was first introduced into a number of cantonal constitutions following the revolutionary movement of the thirties. Although regarded as an extremely dangerous innovation by the conservatives of that era, it made such a favorable impression that it was incorporated in the federal constitution of 1848. A clause in the same instrument imposed it upon the cantons by making it an essential to the guarantee of their constitutions by the federation.<sup>2</sup>

Reform  
of  
initiative,  
1891

It was the express opinion of the constituent assembly of 1848 that the initiative should apply to partial as well as total revisions. In 1879, however, when a petition signed by over 50,000 qualified electors praying for the establishment of a bank-note monopoly was handed in, the Federal Assembly refused to consider the matter in this form. In the opinion of the legislature the right of the people extended only to asking

<sup>1</sup> See Chapter VII.

<sup>2</sup> Art. 6, cl. c.

## FEDERAL LEGISLATION

for a revision of the constitution in general terms. This meant that every attempt to secure by initiative an amendment to the constitution, no matter how specific and narrow its terms, would result in throwing the whole document into the melting pot. Under the system then existing, moreover, every initiative petition which received a majority upon submission to the popular vote was to be followed by the dissolution of the two houses and the election of a new legislature for the purpose of undertaking the revision. It was doubtless in order to prevent such a dissolution that the Federal Assembly of 1879 refused to act upon a specific initiative petition. Confronted by the prospect of so much unsettlement in order to secure so small an amendment, it is not strange that the people voted unfavorably (October 31, 1880) upon the proposal to proceed with the initiative.

But as a result of the somewhat arbitrary action of the legislature in this matter, an agitation was begun for the establishment of the initiative in unequivocal form. In 1891 this movement was successful, and the constitution was amended to permit partial revision upon the initiative of 50,000 voters and to eliminate the necessity of electing a new legislature in such cases.<sup>1</sup> Peti-

<sup>1</sup> According to a law passed January 17, 1892, signatures to initiative petitions must be collected within a period of six months. The Federal Assembly is given a year to decide whether it favors a proposal brought forward in this way. If

## GOVERNMENT OF SWITZERLAND

tioners may now present their request either in general terms or in the form of a completed draft. In the former case, if the proposal meets with the support of the legislature, the latter formulates the amendment in accordance with the sense of the petitioners and submits it to a vote of the people and cantons. If the Federal Assembly disagrees with the general proposal of the petitioners, it may submit the question to the people. In case the latter upholds the petitioners, the legislature must proceed with the revision.

When the petitioners submit a formal draft which meets the approval of the legislature, the amendment is submitted forthwith to a vote of the people and cantons. If the Federal Assembly is not in agreement with the submitted draft, it may recommend its rejection, or it may submit a counter proposition at the same time that the initiative amendment is voted upon by the people and cantons. In the last analysis, therefore, 50,000 Swiss voters may compel the submission to popular vote of any constitutional amendment, provided it be in the form of a completed draft. All that an unwilling legislature can do is to submit a counter proposal or advise the people to vote down the initiative project. When one recalls the great length of

it takes no action within the year, the Federal Council submits the proposal to the vote of the people. However, no time limit is fixed within which the Federal Assembly must draft a measure proposed by initiative.

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## INITIATIVE VOTES Swiss Constitutional Amendments, 1874-1917

Date	Measure	Number of signatures to petition	Vote		Result A, accepted R, rejected
			Aff.	Neg.	
1880, Oct. 31	Total revision in order to create bank-note monopoly.....	52,588	121,099 4 1/2	260,126 17 1/2	R
1893, Aug. 20	Method of slaughtering animals.....	83,159	191,527 11 1/2	127,101 10 1/2	A
1894, June 3	Right to work, duty of state to provide employment.....	52,387	75,880 0	308,289 22	R
1894, Nov. 4	Dividing part of federal customs revenue among cantons.....	67,828	145,462 8 1/2	350,639 13 1/2	R
1900, Nov. 4	Election of National Council by proportional representation.....	64,675	169,018 10 1/2	244,570 11 1/2	R
1900, Nov. 4	Election of Federal Council by popular vote, increasing its membership to nine.....	56,350	145,936 8	270,502 14	R
1903, Oct. 25	Basing apportionment of National Council on citizen population exclusively.....	57,379	95,131 4	295,085 18	R
1908, July 5	Prohibiting absinthe.....	167,814	241,078 20	138,669 2	A
1908, Oct. 25	Federal regulation of water power.....	95,200	304,923 21 1/2	56,237 1 1/2	A
1910, Oct. 23	Election of National Council by proportional representation.....	142,263	240,305 12	265,194 10	R

## GOVERNMENT OF SWITZERLAND

the federal constitution and the extended list of topics which it covers, it is evident that the Swiss initiative in its present easily workable form conveys large powers of constituent legislation to the people.

In the preceding table are presented all cases in which the initiative has been invoked since the constitutional revision of 1874.

Results  
attained  
by  
initiative

Out of ten attempts to amend the constitution by the initiative, only three have been successful. This is in sharp contrast with the fate of the amendments fostered by the legislature, of which seventeen out of twenty-two were sustained upon referendum. In the latter case, of course, the presumption is that the proposed change must have wide popular support, as otherwise the two houses would hardly take it up. An initiative proposal, on the other hand, is undertaken precisely because the legislature stands out against it, presumably since the representatives feel that it does not command a popular majority. In a sense an initiative proposal is a wager by the petitioners that their judgment is better than that of the Federal Assembly, made after the latter has had an opportunity to place all the favored bets itself. Hence the much greater mortality of initiative than of legislative amendments.

Four of the initiative amendments presented in the above table are in the nature of governmental and political changes, viz., the unsuccessful

## FEDERAL LEGISLATION

attempts to establish proportional representation in 1900 and 1910; the proposal to elect the Federal Council by popular vote, defeated in 1900; and the proposal regarding the apportionment of the National Council, defeated in 1903. Three initiative proposals were economic or financial in character: the attempted total revision to secure a bank-note monopoly, defeated in 1880, but carried in 1891 by an amendment originating in the legislature; the proposal to divide part of the federal customs revenues among the cantons, defeated in 1894; and the important water-power amendment, carried in 1908. The "right to work" initiative, defeated in 1894, falls in the field of social economics. Prohibition of absinthe, carried in 1908, was a moral issue, and this was to some extent true also of the initiative regarding methods of slaughtering animals, carried in 1893.

Earlier writers on the Swiss initiative have been too much inclined to condemn the institution because of the uses to which it was put during the first few years of its existence. Most obnoxious of these was the last-named amendment, regarding the method of slaughtering animals, surely a most unusual proposition to inject into a federal constitution. On this point, however, it is worth observing that if the initiative were applicable in the case of ordinary legislation, it is improbable that the proposal would have taken constitutional form. As pre-

Use of  
initiative  
to  
regulate  
methods  
of  
slaugh-  
tering



## GOVERNMENT OF SWITZERLAND

sented by 83,000 petitioners, — more than 30,000 in excess of the required number, — it read:

“The killing of animals without benumbing before the drawing of blood is forbidden; this provision applies to every method of slaughter and to every species of animals.”<sup>1</sup>

Originally advocated by the S. P. C. A., this proposal soon became a vehicle of anti-Semitic feeling, which exists in Switzerland, although not to the same extent as in some of its greater neighbors. To the honor of the federal legislature, both the National Council and the Council of States urged that it be voted down. Nevertheless, it carried by a majority of nearly 75,000, although the total participation was the smallest recorded in any of the ten Swiss initiative votes. The result has something of the appearance of a fluke; the advocates of the measure seem to have turned out in full force, while its opponents remained at home. If so, this first attempt to use the initiative for partial revision may serve as an excellent lesson on the folly of allowing such matters to go by default. While savoring of petty persecution of the Jews, the action taken seems to have been of little practical importance. No penalty is provided in the amendment, which makes it a dead letter in the cantons which do not choose to enforce it. Although petitioned to do so, the federal legislature has refused to

<sup>1</sup> Art. 25, ii. Cf. Dodd, “Modern Constitutions,” II, 263.

## FEDERAL LEGISLATION

pass a law inflicting a penalty for the transgression of the amendment.<sup>1</sup>

A year later two amendments were proposed by initiative. The first, which originated with the Socialist party, sought to establish the right to work and the duty of the state to provide it. Details of the demand included reduction in the hours of labor, establishment of workmen's exchanges, insurance against unemployment, and the creation of "an official board . . . to which workmen might appeal against their masters." It was defeated by a vote of four to one. In the same year a raid on the federal treasury was attempted. If it had succeeded some six millions of francs, derived from customs duties, would have been taken from the national government each year and distributed among the cantons at the rate of two francs per capita of their population. After a heated campaign which brought out a heavy participation, this proposal was defeated by a vote of more than two to one. The first period of the Swiss partial initiative thus closed with one rather disgraceful futility to its account, and two dangerous proposals defeated. In the way of positive and encouraging results, it offered little besides the incidental education of the electorate and the impressive emphasis with which the last two initiative proposals were defeated.

For six years no successful attempt was made

<sup>1</sup> Deploige, "Referendum in Switzerland," p. 236.

Socialist  
efforts  
to use  
initiative

## GOVERNMENT OF SWITZERLAND

to invoke the federal initiative. When, in 1900, it again began to be actively employed, the measures thus proposed had taken on a different character. With two exceptions they embodied moderate political reforms in favor of which much can be said. Proportional representation was defeated twice, first in 1900 and again in 1910. In the latter year it carried a majority of the popular vote, but failed of acceptance because the cantonal vote was against it, the only occasion that the two have been in disagreement since the constitution of 1874 was adopted. Election of the Federal Council by popular vote, defeated in 1900, and the apportionment of the National Council upon citizen population exclusively, defeated in 1903, are both projects which have much in their favor. There seems to be general agreement that the water-power amendment, proposed by initiative and accepted in 1908, is a valuable piece of constructive legislation.

### **Absinthe Initiative**

The absinthe initiative of 1908 resembles the reestablishment of the death penalty twenty-one years earlier, in that it was the result of a wave of popular indignation. In certain parts of Switzerland the use of this liquor was the cause of much demoralization. A series of atrocious murders committed by a workman while under its influence led to the circulation of initiative petitions which received 167,814 signatures,—more than three times the number required.

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Both houses advised acceptance of the measure, and it was carried by a large majority. The amendment thus added to the constitution prohibits in the whole extent of the federation the manufacture, importation, transportation, sale, and storage for the purpose of sale, of absinthe and its imitations, to take effect two years after its adoption. By a law passed June 24, 1910,<sup>1</sup> the federal legislature provided in detail for the execution of the amendment.

At present (1917) four federal initiative proposals are pending in Switzerland. One of these, with 118,901 signatures, prohibits the establishment of gambling houses, a few of which, despite Article 35 of the constitution, are tolerated in Switzerland, — chiefly, it would seem, for the use of tourists. Encouraged by the popular vote of 1910, advocates of proportional representation have brought it forward for a third time, securing 122,080 signatures to their petition in 1913. A proposal for the submission of treaties with foreign countries to referendum vote received 64,391 signatures. In order to avoid political agitation during the war, the submission of these measures to the electorate has so far been postponed — not, however, without considerable grumbling from their advocates. Quite recently, however, the Socialists have brought forward a petition signed by 108,064 voters, proposing that the federation shall be

<sup>1</sup> A. S. XXVI, 1059.

## GOVERNMENT OF SWITZERLAND

empowered to raise an annual direct progressive tax on property and incomes, one tenth of the gross proceeds to go to the cantons.<sup>1</sup>

Initiative  
measures  
since  
1900  
moderate  
in  
character

Whatever grounds for criticism may be afforded by the earlier experiences of the Swiss with the initiative, it seems to have justified itself from 1900 on. The measures submitted during the later period were moderate and progressive. Those which failed laid an educational foundation for reforms which are likely to be made in the not distant future, while the two successful amendments represent substantial achievement. The permanence of the present constitutional initiative is assured, and there is considerable advocacy of the proposition to extend it to the enactment of ordinary federal legislation.<sup>2</sup> An amendment to this effect was presented by the Federal Council to the Federal Assembly in 1906, and after debate in the lower house referred back to the Federal Council for further report.<sup>3</sup>

### III. *The Optional Referendum*

While the constitutional referendum owes its origin to America, the referendum on ordinary legislation is a typical Swiss product. A somewhat similar institution existed in Valais, Graubünden, Bern, and Geneva prior to the nineteenth

<sup>1</sup> *Amerikanische Schweizerzeitung*, August 23, 1917.

<sup>2</sup> Cf. Klaus, "Die Frage der Volksinitiative," pp. 37 *et seq.*

<sup>3</sup> Cf. Dodd, "Modern Constitutions," II, p. 280 for text.

## FEDERAL LEGISLATION

century, but the modern legislative referendum was a result of the revolutionary movement of the thirties. First adopted by St. Gall in 1831, it spread rapidly to other cantons, and now exists in all of them except Freiburg. It became a part of the federal constitution as a result of the general revision of 1874.<sup>1</sup>

The Swiss legislative referendum differs from both the constitutional referendum and the constitutional initiative in that it takes no account of the vote by cantons. In other words, the acceptance or rejection of a federal law submitted to referendum depends solely upon the majority of the popular vote. The referendum may be invoked in the case of all laws, and of all resolutions which have a general application and which are not of an urgent nature. Interpretation of these two qualifications applying to resolutions is left to the legislature, the decisions of which have not infrequently been criticized as illogical and inconsistent. In practice, treaties, the annual budget, money subventions for local improvements, and decisions upon concrete questions submitted to the legislature, such as cases of conflict of authority, approval of cantonal constitutions, etc., are exempted from the referendum. On laws and resolutions subject to it a period of ninety days is allowed from the date of their publication in order to afford time for circulating petitions.

<sup>1</sup> Art. 89.

# GOVERNMENT OF SWITZERLAND

## OPTIONAL REFERENDA Swiss Legislative Projects, 1874-1917

Date	Measure	Number of signatures to petition	Vote		Result A, accepted R, rejected
			Aff.	Neg.	
1875, May 23	Qualifications for right to vote.....	108,674	202,583	207,263	R
1875, May 23	Marriage and registry.....	106,560	213,199	205,069	A
1876, Apr. 23	Issue of bank notes.....	35,886	120,068	193,253	R
1876, July 9	Tax on exemption from military service.....	80,549	156,157	184,894	R
1877, Oct. 21	Labor in factories.....	54,844	181,204	170,857	A
1877, Oct. 21	Tax on exemption from military service.....	63,300	170,223	181,383	R
1877, Oct. 21	Qualifications for right to vote.....	40,207	131,557	213,230	R
1879, Jan. 19	Subsidy to Alpine railroads.....	37,805	278,731	115,571	A
1882, July 30	Prevention of epidemics.....	80,324	68,027	254,340	R
1882, Nov. 26	Appointment of a federal secretary of education.....	180,993	172,010	318,139	R
1884, May 11	Organization department of justice and police.....	93,046	149,729	214,916	R
1884, May 11	Licenses to commercial travelers.....	93,046	174,195	189,550	R
1884, May 11	Appropriation for secretary of legation in Washington.....	93,046	137,824	219,728	R

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1884, May 11	Increased federal power in criminal cases.....	93,046	159,068	202,773	R
1887, May 15	Creating alcohol monopoly.....	52,412	267,122	138,496	A
1889, Nov. 17	Bankruptcy law.....	62,948	244,317	217,921	A
1891, March 15	Pensions for federal officials.....	84,572	91,851	353,977	R
1891, Oct. 18	Tariff law.....	51,564	220,004	158,934	A
1891, Dec. 6	Purchase of shares of Central R. R. Co.....	91,698	130,729	289,406	R
1895, Feb. 3	Diplomatic and consular service.....	37,040	124,517	177,991	R
1896, Oct. 4	Regulating railroad accounting.....	59,706	223,228	176,577	A
1896, Oct. 4	Trade in animals.....	45,982	174,880	209,118	R
1896, Oct. 4	Military penal code.....	69,386	77,169	310,992	R
1897, Feb. 28	Establishing federal bank with monopoly of issue.....	79,123	195,764	255,984	R
1898, Feb. 20	Nationalizing railroads.....	85,505	386,634	182,718	A
1900, May 20	Obligatory sickness and accident insurance, military pensions.....	117,461	148,022	342,114	R
1903, March 15	Customs tariff law increasing rates.....	110,467	332,001	225,123	A
1903, Oct. 25	Supplementing penal law, so-called "press-gag".....	64,990	117,694	264,085	R
1906, June 10	Pure food law.....	57,354	245,397	146,760	A
1907, Nov. 3	Army reorganization.....	88,245	329,953	267,605	A
1912, Feb. 4	Sickness and accident insurance law.....	75,930	285,037	238,694	A

[ 55 ]



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Thirty thousand signatures are required, but frequently this number is greatly exceeded. Although eight cantons may demand a referendum upon federal legislation, no action of this sort has ever been taken.<sup>1</sup>

In the preceding table the results of all Swiss federal referenda are presented from 1874 to 1917.

Results  
of  
referen-  
dum votes

Between 1874 and the end of 1908, 261 laws and resolutions subject to referendum were passed by the Swiss federal legislature.<sup>2</sup> Of these, thirty were brought to a popular vote, and nineteen were rejected. Stated in bare statistical form, therefore, the net effect of the referendum was to invalidate slightly more than 7 per cent of that part of the legislative output to which it applied. During this period a number of weighty measures were passed against which petitions were not even circulated.<sup>3</sup>

Of the thirty federal measures subjected to the referendum, fourteen may be classified as economic or financial, four as falling in the field of social economics, eight of a governmental or political character, three dealing with penal matters, and one, the marriage and registry act.

<sup>1</sup> A federal law of June 17, 1874, provides that cantons desiring a referendum must take action through their legislatures. Cantonal constitutions may reserve to the people the right to amend legislative resolutions of this character.

<sup>2</sup> Curti, "Resultate," p. 36.

<sup>3</sup> *Ibid.*, p. 37, for list of such measures.

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of 1875, as primarily moral in character. The more important of these measures are taken up at some length in the chapters dealing with the general subjects to which they refer and need no further discussion here.

### *General considerations on direct legislation in Switzerland*

In the United States it is customary to state the number of signatures required for initiative and referendum petitions on a percentage basis. Switzerland, it will be recalled, fixed definite numbers; namely, 50,000 for the former and 30,000 for the latter. With the growth of population, therefore, it becomes relatively easier to secure the requisite number of signatures. In 1848, it was estimated that there were 400,000 qualified voters, which made the initiative requirement equivalent to  $12\frac{1}{2}$  per cent.<sup>1</sup> At the end of 1910, there were 820,000 qualified voters in Switzerland.<sup>2</sup> On this basis the number required for initiative petitions amounts to 6.1 per cent and for referendum petitions to 3.6 per cent. These percentages are much lower than those usually fixed in the United States.

The same methods of collecting signatures prevail in the two countries, and the same complaints are heard with regard to the abuse of persuasion, the use of personal and political

How  
signa-  
tures are  
secured

<sup>1</sup> Klaus, *op. cit.*, p. 64.

<sup>2</sup> Curti, *op. cit.*, p. 73.

## GOVERNMENT OF SWITZERLAND

pressure, and the like. In Switzerland also canvassers are sometimes employed and paid at a fixed rate for each signature secured. Some cantons, however, require that petitions be kept at the town hall, voters who desire to sign them being obliged to come there for the purpose. A federal law requires that the presiding officer of each commune must bear witness to the fact that those who have signed the petitions are qualified voters. Forgery of signatures is punishable by a fine, and in aggravated cases by imprisonment for a term not to exceed two years.

### Participation

Owing doubtless to their more perfunctory character, participation is lower in the obligatory constitutional referenda than in initiative and legislative referenda, the average vote on the former from 1874 to 1917 being 339,608 and for the two latter 404,677 and 407,090, respectively. During the second half of this period the average vote fell slightly in the obligatory referenda, but increased considerably in initiative and optional referenda. Experience in the United States also shows that the people take less interest in propositions that come before them automatically than in those which require petitions and the consequent agitation necessary to procure signatures.<sup>1</sup>

On individual measures the participation shows wide variation, as a glance at the tables presented above will show. The lowest percentage quoted

<sup>1</sup> Holcombe, "State Government in the United States," Ch. XIII.

## FEDERAL LEGISLATION

by Curti occurred July 10, 1887, in connection with the second vote on the patent amendment, when only 40.4 per cent of the qualified voters appeared at the polls.<sup>1</sup> In this case the light vote was due to the conviction that the amendment was certain to pass by a large majority. On the other hand, participation has frequently exceeded 70 per cent. In the case of the immensely important law of 1898 providing for the nationalization of railroads, a total vote of 569,352, or 77.6 per cent of the number of qualified voters, was recorded. In considering these figures it should be remembered that ordinary elections in Switzerland, i.e., elections to choose between candidates for office, bring out only from one to two thirds of the qualified voters as a rule.<sup>2</sup>

In the forty-three years that have elapsed since the constitutional revision of 1874, the Swiss people have been called to the polls forty-six times, to vote on sixty-two federal initiative and referendum measures. The largest number voted on in any year was five (1891), and on any one day, four (May 11, 1884). Of course cantonal and communal initiative and referendum proposals also come before the electorate; yet the ballot is never overburdened, as seems to be the case too frequently in the United States. In the populous canton of Zürich, for example, counting both federal and cantonal proposals,

<sup>1</sup> "Resultate," p. 68.

<sup>2</sup> P. Pflüger, "Handspiegel für Nationalratswähler," p. 6.

## GOVERNMENT OF SWITZERLAND

the largest number ever voted upon in one day, between 1874 and 1894, was nine. This was quite exceptional, as the average for the period per voting day was slightly less than two and a half. It is a far cry from such figures to the forty-two constitutional amendments submitted to Ohio voters in 1912, or the thirty-one measures voted upon by Californians in 1914.

The  
referen-  
dum not  
spasmodic  
as a rule

An earlier writer on the Swiss referendum criticizes it as spasmodic in its workings.<sup>1</sup> It is no doubt true that in 1884, when the four measures facetiously known as the "four-humped camel" were voted down at a single stroke, the Swiss people were distinctly of the opinion that "those people in Bern needed a lesson." Yet even on this occasion the returns showed considerable discrimination as between the various proposals. On other occasions, as for example in 1877 and 1896, when more than one measure came before the people at the same time, they showed ability to accept and reject at will. A consideration of the whole experience from 1874 to 1917 indicates spasmodic action as the occasional exception, while careful discrimination according to the character of the measures submitted is the general rule.

To one familiar with American conditions, the cost of a Swiss referendum election is incredibly low. The chief items of expense to the federal government are for printing copies of the

<sup>1</sup> Lowell, "Governments and Parties," II. 254.

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laws for distribution to every qualified voter and for printing the ballots. Other costs are borne by the cantons and communes. It is estimated that the federal government pays from 1 to 4 centimes, the cantons 1 to 2 centimes, and the communes 4 to 7 centimes for each qualified voter, a total of from 6 to 13 centimes (\$.012 to \$.025). For the federation as a whole this would amount to from ten to twenty thousand dollars. Party expenditures are not included in the above, but they are also exceedingly low, as the average Swiss voter does not need much persuasion to go to the polls.

A stock argument against the referendum is that it reduces the legislature's sense of responsibility by placing final decision in the hands of the people. It is a peculiarly difficult argument to discuss, inasmuch as there is no opportunity to observe the conduct of the same legislature acting both with and without the referendum. One of the greatest authorities on the subject, himself for more than twenty years a representative of the Swiss people, expresses the opinion that "the referendum prevented but little good that we wished to do, but simply by standing as a warning before us, averted much evil. . . . In spite of possible backward movements, it did not condemn democracy to a halt, but has given steadiness to progress itself."<sup>1</sup> Professor Rappard admits that there may have

<sup>1</sup> Curti, "Resultate," p. 71.

Argu-  
ments  
against  
direct  
legisla-  
tion

## GOVERNMENT OF SWITZERLAND

been some decline of political standards since the adoption of the initiative and referendum, but attributes it to other causes, chiefly the "anonymous, impersonal committee form of procedure which prevails in all Swiss legislatures."<sup>1</sup> Fear of the popular veto should tend to make legislators timid rather than reckless. If so, the initiative may be used to galvanize them into activity. In any event an otherwise popular legislator's support of measures which fall under the ban of the referendum is not likely to cause his defeat at the ensuing election. According to a humorist quoted by Professor Borgeaud, "the Swiss are a singular people: they disown their representatives, and then they reelect them."

Another argument against direct legislation was that it would make party government impossible. The political atom would supersede the organization; purely mechanical combinations changing with each issue would dominate the political stage. Without stopping here to discuss the beneficence or maleficence of party government, it is certain that in Switzerland the initiative and referendum have not caused the break-up of political organizations. On the other hand, they have increased somewhat the influence of minority parties.

A great many authorities on direct legislation urge its high value as a means of political educa-

<sup>1</sup> "Annals American Academy," 43: 142 (September, 1912).

## FEDERAL LEGISLATION

tion. In campaigns for the choice of officials, personalities necessarily play some part, but in initiative and referendum campaigns there is a maximum opportunity to hear and decide solely on the basis of the facts and principles involved. The Swiss people have repeatedly shown the ability to learn and to change their opinion upon questions submitted to them. Thus, while the proposals were not identical in the two cases, there was a distinct reversal of popular attitude on the railroad bills of 1891 and 1898, on the uniform industrial legislation amendments of 1894 and 1908, and on the army amendment and army bill of 1895 and 1907, respectively.

Edu-  
cational  
value of  
direct  
legis-  
lation

Admitting the difficulty of deducing general tendencies from so extensive a field of legislation, it seems to be generally agreed that the Swiss people are inclined to react strongly against initiative and referendum measures that savor of extravagance or bureaucracy. Professor Rappard also points out their hostility to "ideological legislation," — that is, to legislation "grounded solely or mainly on abstract conceptions of justice," as, for example, the "right to work" initiative. Certainly the referendum has at times betrayed a conservative tendency which dismayed its friends. Thirty years ago Sir Henry Maine indulged in an explanation of this tendency, particularly as shown in connection with labor legislation.<sup>1</sup> In the light of Switzer-

Con-  
clusions

<sup>1</sup> "Popular Government," p. 97.



## GOVERNMENT OF SWITZERLAND

land's subsequent progress toward social legislation and industrial democracy, his theory appears more ingenious than convincing.

Direct legislation in Switzerland has not realized all the extravagant anticipations of its friends. But on the other hand it has completely falsified the dismal prophecies of chaos and revolution uttered by the conservatives of an earlier period. It has become a vital and freely functioning part of the Swiss political organism. Although changes are sometimes suggested in the form and application of the initiative and referendum, there has long since ceased to be any fundamental opposition to them in Switzerland.

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## CHAPTER VII

### THE FEDERAL JUDICIAL SYSTEM

**L**IKE the Federal Council, the Federal Court of Switzerland is a creation of the constitution of 1848. Under the preceding régime (Pact of 1815), the few controversies between cantons not covered by the constitution were referred, as they arose, to arbitrators especially appointed for the purpose. Even under the federal constitution the new court was not kept permanently busy at first. But as a system of federal law was built up by the legislative assembly, its duties increased. The constitutional revision of 1874 greatly strengthened the position of the court. Every subsequent extension by constitutional amendment of the legislative powers of the federation — and they have been numerous — brought with it an increase of the duties devolving upon the Federal Court. In 1893, the transfer to the latter of cases of constitutional law formerly decided by the executive materially increased the scope of its functions. Two years later its work was again greatly extended by conferring upon it jurisdiction in debt and bankruptcy cases.<sup>1</sup>

Creation  
of a  
Federal  
Court

<sup>1</sup> *Bundesgesetz betr. d. Übertragung d. Oberaufsicht üb. d. Schuldbetreibungs- u. Konkurswesen*, June 28, 1895; A. S. XV, 289.

## GOVERNMENT OF SWITZERLAND

As a result of the addition of all these new functions, the Federal Court, which formerly met only once a year at the same time as the legislature, is now kept constantly in session. Pressure of business also made it necessary to increase the number of judges from time to time. In this way the original bench of eleven has grown to the present bench of twenty-four members, assisted by nine alternates.

No  
power to  
declare  
federal  
legislation  
unconsti-  
tutional

Great as has been the growth in the volume of business and general influence of the Federal Court of Switzerland, it nevertheless resembles the courts of other European countries in that it does not possess the power to declare acts of the federal legislature unconstitutional. It may test a cantonal law as to its agreement with the federal constitution, but the latter (Art. 113) expressly makes binding upon the court not only all laws passed by the Federal Assembly but also all decrees of general application issued by the latter and all treaties it approves. Neither directly nor by implication, therefore, was the Swiss Federal Court clothed with the great power of constitutional interpretation which in the hands of the American Supreme Court enabled the latter to play so great a part in the molding of our institutions.

Moreover, the Swiss Federal Court is expressly placed by law<sup>1</sup> under the supervision of the Federal Assembly. It makes an annual report

<sup>1</sup> *Organisation der Bundesrechtspflege*, A. S. XXVIII, 129.

## THE FEDERAL JUDICIAL SYSTEM

to the latter upon all its activities. "Within its judicial field of activity," according to the same statute, "the Federal Court is independent and subject only to the law. A decision of the court may be repealed or amended only by the Federal Court itself in accordance with the provisions of the law." But of course this section of the organization law does not limit the legislative competence of the Federal Assembly.

Judges and alternates of the Swiss Federal Court are chosen by the Swiss Federal Assembly, which must see to it that all three national languages are represented thereon (Art. 107). Any Swiss citizen who is eligible to the National Council may be appointed to the Federal Court. In spite of the extreme democracy of this provision, it is the custom to choose men of eminent legal ability. Members of the court may not at the same time belong to the Federal Assembly or to the Federal Council, nor may they hold other offices within the gift of these two bodies. Neither may they during their term of office hold any other federal or cantonal office, nor engage in any other pursuit, nor practice a profession (Art. 108). A statutory provision similar to that applying to the Federal Council also prohibits judges related by blood or marriage from being at the same time members of the court.

The number of judges and alternates, their

## GOVERNMENT OF SWITZERLAND

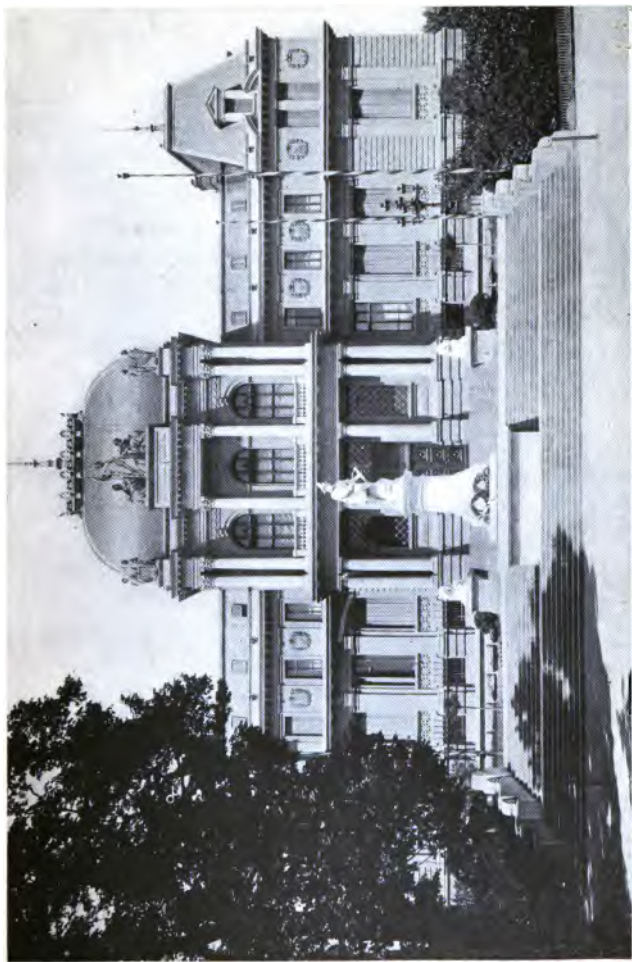
Terms  
and  
salaries  
of judges

terms and salaries, and the organization of the court are all determined by law<sup>1</sup> (Art. 107). At present judges receive a salary of 15,000 francs per annum, with an extra thousand francs for the president of the court. Alternates receive a per diem of 25 francs for each day on the bench, and an allowance for outside time spent in the service of the court. The term of both judges and alternates is six years, or twice as long as that of members of the Federal Council.<sup>2</sup> Judges are reëligible, and reëlection of those who wish to continue their service is the usual rule.

Prior to 1874, the Federal Court had no fixed seat, and held its sessions in a number of cities, although more frequently at Bern than elsewhere. By a decree of that year it was located permanently at Lausanne, the capital of the French-speaking canton of Vaud. This was a graceful concession to the feeling of Romance Switzerland, and it had the further advantage of removing

<sup>1</sup> The law of March 22, 1893, regarding the organization of the federal administration of justice, forms the basis of all more recent enactments under this article of the constitution. It may be found with all subsequent amendments in A. S. XXVIII, 129 *et seq.*, and will be cited hereafter under the abbreviation *O. G.* (*Organisationsgesetz*).

<sup>2</sup> The members of the present court were elected December 12, 1912, and hold office from January 1, 1913, to December 31, 1918. It will be observed that the six-year term of the court does not coincide with two three-year terms of the Federal Council.



FEDERAL COURT BUILDING AT LAUSANNE

5

## THE FEDERAL JUDICIAL SYSTEM

the court from the political atmosphere of Bern. On the heights of Montbenon in the western district of Lausanne the court now occupies a handsome and substantial structure, which, however, is much more modest in proportions and decoration than the typical courthouse of many an American county.

From the membership of the court the Federal Assembly selects a presiding judge and a vice president, each for a term of two years.<sup>1</sup> The court appoints the officials of its secretariat (Art. 109). It also assigns judges and alternates to the various divisions and chambers into which it is divided.

Organ-  
ization

In the field of public law the Federal Court decides (1) cases of conflict of jurisdiction between federal authorities on the one hand and cantonal authorities on the other; (2) disputes between cantons; and (3) complaints of citizens regarding violations of their constitutional rights and also of individuals because of the violation of concordats or treaties (Art. 113).

Juris-  
diction  
of  
Federal  
Court

In civil suits the Federal Court has jurisdiction in cases (1) between the federation and the cantons; (2) between cantons; and (3) between the federation on the one hand and corporations or individuals on the other when the latter are plaintiffs or when either party demands it, and when the amount involved exceeds a certain sum, which has been fixed by law at 3000 francs.

<sup>1</sup> O. G., Art. 5.



## GOVERNMENT OF SWITZERLAND

It has jurisdiction also in suits concerning the right of domicile, and in conflicts which arise between communes of different cantons respecting the right of local citizenship (Art. 110). The Federal Court is bound to give judgment in other (civil) cases involving sums of more than 3000 francs when both parties appeal (Art. 111).

With the assistance of juries to decide questions of fact, the Federal Court has criminal jurisdiction (1) in cases of high treason against the federation, and of rebellion and violence against federal authorities; (2) crimes and misdemeanors against international law; (3) political crimes and misdemeanors caused by or resulting from disturbances which occasion armed federal intervention; and (4) charges against officials appointed by federal authority when such charges are turned over to the court by the authority concerned, for criminal action.

In addition to the foregoing, the constitution expressly provided that the competence of the court might be extended by federal legislation (Art. 114), and also that it might be given powers designed to bring about uniformity in the application of civil and business law (Art. 64). By the two constitutional amendments adopted November 13, 1898, express power was conferred upon the federation to deal with all matters of civil law and of criminal law.

Acting under the authority of the amendments of 1898, the work of drafting a uniform civil

## THE FEDERAL JUDICIAL SYSTEM

code was intrusted to Dr. Eugen Huber of the University of Bern. He succeeded in "molding into a practical yet scientific whole a multitude of ancient, local, contradictory, and seemingly irreconcilable customs and statutes, cantonal and federal, which had in the course of centuries culminated in conditions no longer tolerable by an enlightened people."<sup>1</sup> Upon the completion of Dr. Huber's draft it was submitted first to a commission appointed by the head of the federal department of justice and police, and composed of thirty-two eminent professors and practitioners of the law, legislators, magistrates, and experts in special fields of civil law. This commission solicited criticisms and suggestions from every source, and made use of all that proved valuable. Next the draft was submitted for final editorial revision to a small commission of eight members, one of whom was the author. Finally it was passed with comparatively few changes by the Federal Assembly, to take effect January 1, 1912. It is a remarkable tribute to a work of such magnitude and vital importance that the referendum was not invoked against it. The success of this monumental achievement is of

The new  
uniform  
civil  
code

<sup>1</sup> "The Swiss Civil Code of December 10, 1907," translated by Robert P. Shick, p. v. The four parts into which the code is divided deal with the law of persons, of marriage, of inheritance, and of things. A law of March 30, 1911, greatly extended it by the addition of a fifth part dealing with the law of obligations. A. S. XXVII, 317-596.

## GOVERNMENT OF SWITZERLAND

special interest to the United States, for there are "many features of similarity between the Swiss conditions [prior to 1907] and those difficulties our various systems of legislation and jurisprudence have long presented and which in time will demand some like remedy."<sup>1</sup>

The  
proposed  
criminal  
code

Work on the uniform criminal code was somewhat delayed while the Federal Council and Federal Assembly were occupied with the civil code. Preparation of the first draft of the criminal code was intrusted to Professor Karl Stöös. After passing through the hands of two expert commissions, it is now ready (1917) in three books and 431 articles for consideration by the federal legislature. By the reduction of the divergent laws in these two great fields to a uniform basis, marked progress will be made not only toward legal efficiency but also toward the national unity of Switzerland.

Mode of  
operation  
of Federal  
Court

For the performance of its manifold functions the Federal Court is divided into three divisions of eight judges each, the first devoted to public law and the other two to civil law. There is also a chamber composed of three judges for the trial of debt and bankruptcy cases. For criminal cases the court is divided into four chambers, to each of which five or more judges and two alternates are assigned. These are designated (1) the Criminal Chamber, (2) the Federal Penal Court, (3) the Chamber of Complaints, and (4) the Court

<sup>1</sup> Shick, *op. cit.*, p. v.

## THE FEDERAL JUDICIAL SYSTEM

of Cassation. The Criminal Chamber goes on circuit from time to time, holding sessions in each of the three large districts into which the country is divided for this purpose. One of these assize districts is made up of cantons and communes in which Romance languages are spoken, while the other two are composed of German-speaking districts.

In this work the Criminal Chamber is assisted by juries of twelve men each. Jurymen are chosen by popular vote for a term of six years. The election districts in which they are chosen are marked out by the cantons, and the number to be selected is fixed at the ratio of one jurymen to each thousand inhabitants. Out of the lists so constituted fifty-four names are chosen by lot. The federal attorney and the defendant can each challenge twenty of these names. If either or both of them do not exhaust all their challenges, a panel of fourteen is chosen by lot from among the unchallenged names. Twelve of the fourteen serve on the jury, while the remaining two are held to attend court in order that they may act as substitutes in case any regular jurymen is incapacitated during the trial. For their services jurymen receive a per diem of ten francs.

Juries  
in  
criminal  
cases

Sessions of the full Federal Court are held for various important purposes, among which are the filling of offices within the appointive power of the court, matters regarding the internal organization and administration of the court,

## GOVERNMENT OF SWITZERLAND

and decisions in cases which by law are referred to the court as a whole. The latter embrace extradition, appeals from the national expropriation commission, and forced liquidation of railroads or banks of issue. If any separate division of the Federal Court desires to decide a case in a manner contrary to an earlier decision or in conflict with a decision by another division, it must postpone judgment and refer the matter to a session of the court as a whole. When the plenary session has spoken, the separate division of the court which proposed a change must accept its decree. Two thirds of the full membership of the Federal Court is necessary for a quorum at all plenary sessions.

A tariff  
fixing  
lawyers'  
and other  
fees

An interesting feature of the Swiss law on federal legal practice is the presentation of a complete tariff fixing maximum and minimum lawyers' fees, fees of witnesses and experts, and traveling and clerical expenses.<sup>1</sup> This tariff is employed in determining the amount of the costs when these are placed upon one or the other parties to a suit. Also, if a client protests against the bill of his attorney, the court takes the matter under consideration and decides the amount to be paid upon the basis of the legal tariff. There is no separate bar for practice before the Swiss Federal Court. Indeed, there is nothing to prevent any person from pleading his own case before it should he so desire.

<sup>1</sup> O. G., Art. 222 *et seq.*

## THE FEDERAL JUDICIAL SYSTEM

Unlike the federal courts of the United States, the Swiss Federal Court possesses no machinery of its own for the enforcement of its decisions. However, the cantons are obligated by law to execute its decisions in the same way as they execute the decision of their own cantonal courts.<sup>1</sup> In case of failure on the part of the cantons to do this, appeal may be made to the Federal Council, which is empowered to take the necessary action. From the American point of view the inability of the court to enforce its own decisions may seem a serious defect. It is, however, in accord with the Swiss custom of allowing the cantons to administer many federal laws, and in practice seems to cause no serious difficulties.

Switzerland has long been a haven for political refugees from every other European nation. Some of these have abused the right of asylum extended to them by plotting against the government of their native land. To meet this situation the office of Federal Attorney was created in 1889.<sup>2</sup> The Federal Attorney is appointed by the Federal Council, but is not a member of that body, nor are his powers at all comparable with those of the Attorney General of the United States. His principal duties are to secure, chiefly from cantonal police authorities, the facts with regard to dangerous foreigners resident in the

Treat-  
ment  
of  
political  
refugees

<sup>1</sup> *O. G.*, Art. 45.

<sup>2</sup> *B. Ges.* of June 28, 1889; A. S. XI, 243.

## GOVERNMENT OF SWITZERLAND

country; to assemble this information at a central office; and to use it in making suggestions to the Federal Council for the expulsion of any such characters. If the Federal Council decides to issue a decree of expulsion, the execution of the latter is intrusted to the canton or cantons concerned.

Although large transfers of power have been made to the Federal Court in the last quarter century, the Federal Council retained jurisdiction over important matters of administrative law, subject to decision on appeal by the Federal Assembly. This arrangement is illogical and unsatisfactory, for the Federal Council is primarily not a judicial but an administrative body which is greatly overburdened by its duties in the latter field, while the Federal Assembly is not only unwieldy but is also primarily legislative and political in character, and therefore quite unfitted for judicial action. Moreover, by an extensive interpretation of the concept of constitutional rights under both federal and cantonal constitutions the Federal Court succeeded in drawing into its forum every invasion of such rights by cantonal authorities. It could not, however, extend this control over federal administrative officials.<sup>1</sup>

A first step toward the reform of this condition

<sup>1</sup> Cf. F. Fleiner's masterly article on "Fortbildung d. schw. Bundesverfassung seit d. Jahre 1874," in the *Jahrbuch d. öff. Rechts d. Gegenwart*, I, 392 (1907).

## THE FEDERAL JUDICIAL SYSTEM

was taken by the acceptance of an amendment to the federal constitution, October 25, 1914.<sup>1</sup> This amendment provides that a federal administrative court may be established to exercise jurisdiction in such cases of federal administrative law as may be assigned to it by the federal legislature; also, under similar conditions, of disciplinary cases so far as the latter are not assigned to another jurisdiction. With the approval of the Federal Assembly the cantons may transfer their own cases under administrative law to the Federal Court. Legislation to carry out these new constitutional provisions will doubtless be enacted in due time.

The  
new  
federal  
adminis-  
trative  
court

With the completion of this reform the judicial system of the Swiss federation will be far more complete and logical than at any time in its past history. If, as seems likely, the central government continues to acquire new powers, the importance of the court will also continue to increase. That it will attain the constitutional position of the Supreme Court of the United States, and particularly the power to declare legislative acts unconstitutional, does not, however, seem probable. It would be contrary not only to Swiss but to continental traditions as well. Even in the United States *legicide* is manifestly on the decline. Finally, the Swiss possess in the referendum a popular instrument

<sup>1</sup> Arts. 103 in new form; IV ii, *eidg. Verwaltungs- u. Disziplinargerichtsbarkeit*, Art. 114 ii; A. S. XXX, 659.



## GOVERNMENT OF SWITZERLAND

for use against legislative usurpation, and to that extent do not need the protection of courts which might themselves develop too exalted notions of their powers.

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## CHAPTER VIII

### SWISS FEDERAL FINANCE

**T**HERE are a number of striking similarities between the finance systems of Switzerland and the United States. Primarily most of these go back to the federal form of government common to the two countries, and the consequent necessity of finding sources of revenue for the central government apart from those drawn upon by the cantonal and communal governments. In both Switzerland and the United States the same general solution of the problem was attempted; namely, the setting aside of indirect taxes for the use of the federation, and the retention of direct taxes for the use of the cantons. With us the old distinction is breaking down and the central government is reaching over more and more into the preserves of the states. So far the Swiss have guarded the separate cantonal field more jealously, but under present conditions it is doubtful if they can continue to do so.

Similarities  
between  
finance  
systems  
of  
Switzerland  
and the  
United  
States

There are other resemblances of a less fundamental character between the fiscal systems of the two countries. Although scarcely so "paramount" an issue as it was at one time in the United States, the question of protection has caused a great deal of contention in Swiss politics.

## GOVERNMENT OF SWITZERLAND

Further, according to Professor Seligman, Switzerland is "the only European country where the general property tax still plays an important rôle."<sup>1</sup> Finally, it must be confessed that in Switzerland as in America the gentle art of tax-dodging is by no means unknown.

Sources  
of  
federal  
income

According to the constitution the expenses of the federation shall be met (a) from the income of federal property; (b) from the proceeds of the federal customs; (c) from the proceeds of posts and telegraphs; (d) from the proceeds of the powder monopoly; (e) from half of the gross receipts from the tax on military exemptions levied by the cantons; and (f) from the contributions of the cantons, which shall be determined by federal legislation, with special reference to their wealth and resources.<sup>2</sup>

As stated in the constitution, this is a decidedly imposing array of resources, but upon analysis it shrinks considerably. Contributions by the cantons recall the old régime when the small sums necessary for the support of the diet were thus procured. An ideal system for the apportionment of such contributions under the present federal government was worked out in 1875,<sup>3</sup> but the central authorities have never asked for assistance on this basis. Posts, telegraphs, and telephones yield moderate returns. The purpose of the powder monopoly established in 1848

<sup>1</sup> "Essays in Taxation," p. 568.

<sup>2</sup> Art. 42.

<sup>3</sup> Vincent, p. 243.

## SWISS FEDERAL FINANCE

was not to secure revenue but to assure the government adequate supplies for all purposes of this military necessity. Blasting powder is not included. However, the monopoly has been made to produce a small net profit annually. Receipts from the military exemption tax law are not large. They amounted to a little over a million francs a year in the beginning, increasing to 2,143,062 francs in 1910. As to the income from federal property, it must be remembered that the new central government possessed very little property at the time of its creation in 1848. All in all, therefore, in spite of the number of different sources of revenue enumerated in the constitution, the real burden of providing for the expenditures of the federation devolved very largely upon one of them — namely, the federal customs.

In accordance with its modest financial expectations, the new federal government expended in its first year only six and a half million francs. Even under the constitution of 1848, however, growth was vigorous. In 1870, the gross expenditures amounted to nearly thirty-one millions of francs. Since 1874, the rapid addition of new federal functions, and more recently the development of social reform policies, have brought about a degree of financial expansion that could scarcely have been foreseen by the fathers of the Swiss constitution. From the following table a summary view of this development may be obtained:

Expendi-  
tures

# GOVERNMENT OF SWITZERLAND

## EXPENDITURES OF SWISS FEDERAL GOVERNMENT <sup>1</sup>

Year	Total expenditures	Expenditures of			Expenditures for other than posts, telegraphs, telephones, and power monopoly
		Postal administration	Telegraph and telephone administration	Powder monopoly	
	(francs)	(francs)	(francs)	(francs)	(francs)
1880	41,038,228	13,501,575	1,812,906	604,561	25,119,186
1890	66,688,381	21,908,658	3,266,834	1,002,677	40,510,212
1900	102,757,837	33,430,463	10,159,158	1,210,501	57,957,715
1910	161,330,520	54,508,426	15,820,917	295,659	90,705,518

During the period 1880-1910, expenditures for postal administration grew somewhat more rapidly, and for telephones and telegraphs much more rapidly, than gross expenditures. In 1910, the two branches together accounted for 43.5 per cent of the total. As for the powder monopoly, its expenditures amounted to less than one fifth of one per cent of the total. Normally, of course, the outlay for these three branches of the administration is more than covered by the income they yield. The expenditures of the federal government for all other branches of the administration, as shown in the last column of the above table,

<sup>1</sup> Not including federal railways or alcohol monopoly, the administration of both of which is kept separate from other branches of the federal government.

# SWISS FEDERAL FINANCE

## INCOME FROM VARIOUS SOURCES Swiss Federal Government

Year	Customs	Military exemption tax	Income from property	Net profits postal administration	Net profits telegraph-telephone administration	Net profits powder monopoly
1880	(francs) 17,211,483	(francs) 1,220,000	(francs) 450,810	(francs) 2,012,164	(francs) 560,640	(francs) 138,976
1890	31,258,296	1,373,779	1,057,144	2,271,362	1,043,104	95,398
1900	48,010,011	1,747,097	1,140,520	2,700,351	897,718 <sup>1</sup>	209,444
1910	80,660,829	2,143,061	1,459,119	2,568,079	519,220	98,294

<sup>1</sup> Deficit

## GOVERNMENT OF SWITZERLAND

must be met from the various sources enumerated in the constitution. How this has been done at various dates is shown in the table on page 183.

In 1910 the expenditures of the federal government, apart from posts, telegraphs, telephones, and powder monopoly, amounted in round numbers to ninety millions of francs. Of this sum eighty millions were raised by customs duties, a fact which brings out sharply the large measure of dependence placed upon this one source of revenue. The Swiss tariff yielded in 1910, 21.40 francs per capita (\$4.13), as compared to a corresponding figure of \$3.50 for the United States.

From  
free trade  
to  
protec-  
tionism

Switzerland's evolution from a virtually free-trade to a high protective tariff system is most interesting. Prior to the adoption of the federal constitution, import, export, and sometimes transit duties were levied by the cantons. They were varied and confusing, but not particularly high. The cantons relinquished the power of taxation in this field<sup>1</sup> to the new federal government rather reluctantly, and not without the stipulation that each canton should receive out of the customs revenue four batzen (about eight cents) per head of its total population annually.<sup>2</sup> This payment continued until the financial adjustment between federation and cantons at

<sup>1</sup> Except as to wines and other liquors. See Art. 32, Constitution of 1874.

<sup>2</sup> Constitution 1848, Art. 26.

## SWISS FEDERAL FINANCE

the constitutional revision of 1874, since which date the entire proceeds of the customs have remained in the treasury of the central government.<sup>1</sup>

In the execution of this power the federation was enjoined by the constitution itself that import duties on raw materials and necessities of life should be as low as possible, and that the highest rates should be charged on luxuries.<sup>2</sup> Export duties also were to be as low as possible. As to the latter, the constitutional rule has been followed. Swiss export duties are few in number and very low. During the infancy of the federal government its financial needs were so small that it was enabled to follow the essentially free-trade maxims of the constitution with regard to import duties as well. In 1850, for example, the revenue from the tariff amounted to only 1.78 francs (\$.34) per capita. As the most productive source of federal income, however, it was certain to be drawn upon more and more heavily as the new government developed its powers. To this unavoidable necessity there was added later a demand for protection coming from the agricultural as well as the industrial sections of the country. Tariff revisions undertaken during and since the eighties show the cumulative effects of these influences.<sup>3</sup> At

<sup>1</sup> Constitution 1874, Art. 30.

<sup>2</sup> *Ibid.*, Art. 29.

<sup>3</sup> Laws of June 26, 1884, revised December 7, 1887, April 10, 1891; and of October 10, 1902.



## GOVERNMENT OF SWITZERLAND

present Switzerland is on a high protective basis, and free trade has vanished from the field of practical politics. In 1891, and again in 1903, tariff laws increasing rates of duty were challenged by referendum petitions. Protectionism was victorious by a vote of nearly two to one in both cases. The large participation at the second referendum, when more than 550,000 votes were cast, makes it especially significant. By way of contrast it is rather striking that after generations of heated tariff discussion we of the United States have never yet had that question passed upon separately and decisively by the electorate. It is conceivable that such a decision unmistakably given one way or the other might do much to clear the air and relieve our national politics of a hackneyed political issue, as it did in Switzerland.

The  
military  
exemption  
tax

The military exemption tax as fixed by the federal law of June 28, 1878,<sup>1</sup> includes (1) a poll tax of six francs; (2) a  $1\frac{1}{2}$  per cent tax on net income; and (3) a  $1\frac{1}{2}$  mill tax on net property. It may not, however, exceed 3000 francs all together in the case of any one person. Incomes of less than 600 francs annually, and property holdings in amounts less than 1000 francs, are exempt. Persons exempted after eight years' military service, or between thirty-two and forty-four years of age, pay one half the rates stated above on incomes and property. During

<sup>1</sup> A. S. III, 571.

## SWISS FEDERAL FINANCE

years when a large part of the army is mobilized, the Federal Assembly may double the tax.

Owing to the direct character of the military exemption tax law, its execution was left to the cantons, subject to federal supervision. There has been a great deal of laxness in this matter, which was corrected in part by the federal law of March 29, 1901, increasing the penalties for non-payment.<sup>1</sup> On the other hand, it is the custom to collect the exemption tax from loyal Swiss citizens living abroad and therefore unable to perform military service. After the cantons have assessed and collected the tax, they turn over one half the gross proceeds to the federal treasury.

Another tax in which the interest of the federation is purely that of legislative uniformity and convenience is the license tax on commercial travelers.<sup>2</sup> It amounts to 150 francs for a year, or 100 francs for half a year. The tax is collected by the cantons, which, after deducting four per cent to cover the costs of collection, transmit the remainder to the federal authorities. All that the latter have to do with the proceeds is to divide them among the cantons in proportion to the number of their inhabitants.

Although contributing nothing to the federal treasury, the Swiss alcohol monopoly is of great importance from the administrative and social point of view. By an amendment to the constitution adopted in 1885,<sup>3</sup> the federal govern-

The  
Swiss  
alcohol  
monopoly

<sup>1</sup> A. S. XVIII, 695.    <sup>2</sup> *Ibid.*, XIII, 43.    <sup>3</sup> Art. 32 ii.

## GOVERNMENT OF SWITZERLAND

ment was authorized to make regulations by law for the manufacture and sale of distilled liquors, including alcohol for industrial uses. However, the distillation of wine, and of fruit, berries, roots, and the like, which is carried on to a considerable extent by peasants, was exempted from federal legislation as to manufacture and tax.

A law based upon this amendment to the constitution and providing for the establishment of an alcohol monopoly was challenged by the referendum, but on May 15, 1887, it was approved by a vote of nearly two to one.<sup>1</sup> While the central government has entire control of the monopoly which was thus created, it must divide the net proceeds among the cantons in proportion to their population. Out of what is paid to them from this source the cantons are required to expend not less than one tenth to combat alcoholism in its causes and effects.

One of the purposes behind the creation of the alcohol monopoly was the suppression of a large number of small-scale distilleries which flourished in certain parts of the country, each of them a center of demoralization locally. This was promptly accomplished, sixty-eight plants being retained for the purpose of the government, while over 1200 establishments were closed. Owners of the latter received indemnities based upon the minimum value of their

<sup>1</sup> A translation of this law may be found in U. S. Consular Reports, No. 81, pp. 45-48 (1887).

## SWISS FEDERAL FINANCE

plants, good-will not included. All together, 3,655,050 francs were paid out in this way, an average of about \$600 for each distillery that was closed.

Still another argument in favor of the monopoly was that it would provide a purer grade of liquor than private enterprise, thus inflicting less damage upon drinkers who could not be deterred from its use. The government succeeded only too well in realizing this end. Shortly after it took over the business the toppers of the country began complaining that they missed the familiar flavor of fusel in their "Schnapps." To meet these complaints the government was obliged to adulterate its own product with  $\frac{1}{2}$  per mille of fusel oil — this quantity being too small, it is said, to be harmful.

Finally, it was urged that the alcohol monopoly would curtail the consumption of distilled liquor by raising its price. As to raising the price there can be no doubt whatever, but there is considerable difference among authorities as to whether alcoholism is on the decline in Switzerland. It must be remembered that home-made spirits and beer are not included under the federal monopoly; also there is some smuggling of liquor into the country. The best opinion seems to be that there has been some decline of consumption as a result of the higher prices exacted by the government. Considering the rapid increase of alcoholism that is taking place

Has  
consump-  
tion  
of  
alcohol  
de-  
clined?

## GOVERNMENT OF SWITZERLAND

among neighboring peoples, the Swiss doubtless have reason to congratulate themselves upon the moderate results obtained in this way by the monopoly.<sup>1</sup>

Methods  
of  
combating  
alcoholism

Vice, as was noted above, is made to contribute to virtue's cause in Switzerland by the legislative proviso that the cantons must expend ten per cent of their receipts from the profits of alcohol in combating alcoholism. A great variety of experiments have been made along this line, including (1) the maintenance of orphan asylums, of institutions for youthful offenders, and for weak and epileptic children; (2) care of the indigent insane in asylums and relief of those dependent upon them; (3) improvement of the people's food supply by founding and supporting consumers' coöperative associations, people's kitchens, etc.; (4) vacation colonies for poor children and the furnishing of wholesome food to the latter; (5) popular instruction regarding the devastation wrought by alcohol on the one hand and the beneficent results of temperance and saving habits on the other, as well as distribution of good literature and the foundation and support of reading rooms; (6) establishment and support of institutions for the treatment of drunkards; and (7) subsidies to temperance associations. Other purposes for which the money is used are (1) maintenance of penal and reformatory institutions; (2) support of dis-

<sup>1</sup> Clerget, "La Suisse au XXe Siècle," p. 81.

## SWISS FEDERAL FINANCE

charged prisoners; and (3) relief in kind for poor travelers.<sup>1</sup>

Just how far these numerous and divergent methods of moral prophylaxis prevail to turn the people against alcohol it is difficult to say. In 1903, they rejected decisively a constitutional amendment proposed by the Federal Assembly which would have increased the limits of free trade in spirituous liquors, other than distilled, from two to ten liters, — in other words a measure to wipe out the notorious "two-liter inns" of the country. On the other hand, the initiative was successfully employed in 1908 to banish absinthe. Swiss temperance advocates are inclined to believe that the official classes, seeing scant likelihood of equivalent revenue from other sources than the alcohol monopoly, are for that reason somewhat less inclined to combat effectively the use of liquors. *††*

Financially the alcohol monopoly has been very productive, as the following figures show:

FINANCIAL RESULTS, SWISS ALCOHOL MONOPOLY

Year	Receipts	Expenditures	Profits
	(francs)	(francs)	(francs)
1890	13,773,596	6,778,270	6,995,326
1900	13,036,295	6,680,759	6,355,536
1910	17,916,128	8,271,677	9,644,451
1915	14,699,728	7,349,785	7,349,943

<sup>1</sup> Burckhardt, "Kommentar," 2d ed., p. 290.

## GOVERNMENT OF SWITZERLAND

The monopoly is required by law to procure one fourth of its supply of alcohol from domestic producers. Most of this is made from potatoes, which are not produced in sufficient quantities in Switzerland to meet food demands. Domestic alcohol costs the monopoly 80 to 90 francs a hectoliter, or three or four times as much as the supply purchased abroad. The monopoly sells alcohol in quantities of not less than 150 liters at prices ranging from 120 to 150 francs. Otherwise wholesale trade is free. If beer were included under the monopoly or adequately taxed, it could be made to yield large revenues. Regulation of the retail trade in liquor and the licensing of drinking places is in the hands of the cantons.

### Coinage

Switzerland has been a member of the Latin Monetary Union since its foundation in 1865, and thus possesses a coinage basically the same as that of France, Italy, Belgium, and Greece. By the constitution of 1874, the federation was given the power to regulate by law the issue and redemption of bank notes, but it was specifically prohibited from creating a monopoly for the issue of such notes. This left the numerous banks chartered by the cantons actually in control of the field. In 1880, advocates of a national bank endeavored to amend the constitution by initiative, but were unsuccessful, as a general revision was declared to be necessary to accomplish this specific purpose. Eleven years later

## SWISS FEDERAL FINANCE

the movement succeeded. In its new form Article 39 of the constitution confers the right to issue bank notes and other similar paper money exclusively upon the federation. The exercise of this power may be intrusted to a national bank with a special administration of its own, or to a central joint-stock bank under government coöperation and supervision. At least two thirds of the net profits of the bank over and above a reasonable interest or dividends upon its capital stock and the necessary additions to its reserve fund, must go to the cantons. The bank and its branches are to be subject to no taxation in the cantons.

One law designed to carry out the provisions of this amendment in the form of a bank wholly under federal control, was defeated at the referendum of February 28, 1897, chiefly owing to cantonal jealousy. After a number of attempts this objection was successfully overcome by the law of October 6, 1906,<sup>1</sup> which permitted the cantons and former banks of issue, thirty-four in number, to take out stock in the new national bank to the extent of two fifths and one fifth, respectively, of its total capital. Dividends are limited to four per cent. While the federation itself took no stock, it is in full control of the administration of the bank.

With headquarters in Bern and Zürich, the

<sup>1</sup> A. S. XXII, 47.



## GOVERNMENT OF SWITZERLAND

The new  
federal  
bank

new bank opened its doors on June 20, 1907. It has been a pronounced success not only financially, but in its larger purposes of providing a uniform, elastic currency and stabilizing the credit of the country. In 1913 the bank yielded net profits amounting to 3,487,080 francs, and its business has largely increased subsequently. By its wise and determined policy at the outbreak of the war it brought a threatened financial panic to a speedy end. As the agent of the government in its difficult tasks of war finance, particularly in floating the mobilization loans, the new national bank has proved itself one of the strongest foundation stones of the whole federal structure.

Other  
state  
monopolies

Monopolies of other lines of business have frequently been proposed in Switzerland. A match monopoly was voted down at a referendum, September 29, 1895. One of the principal purposes for which it had been proposed was the abolition of the horrible trade disease known as necrosis or "phossy jaw." This end was accomplished in another way by the enactment of a law, November 2, 1898, prohibiting the manufacture, importation, exportation, and sale of matches made of white phosphorus, and prescribing other safeguards for the health of workers in this industry. Owing to a conflict with Germany in regard to flour, a monopoly of flour and grain has been under consideration since 1909. The war has led to the establishment,

## SWISS FEDERAL FINANCE

temporarily at least, of monopolies in this and other foods. A tobacco monopoly was suggested by the Federal Council in 1899 as a source of revenue for workingmen's insurance. War conditions have again brought this proposal to the front as a source of general revenue.

Preparation of the annual budget is intrusted to the Federal Council, most of the work being done, of course, in the department of finance and customs. It must be completed and submitted to the finance committees of the two houses at least a month before the December session in which it is voted. The chairmen of the committees report on the budget at considerable length in presenting it to the legislative bodies. It is discussed very freely from the floor. The head of the department of finance is constantly present to answer questions and objections. In the interests of their own appropriations the heads of other departments are also frequently heard. The whole budget is gone over in regular order and the most minute detail. No item is too small for criticism. It is not uncommon for items to be reduced or thrown out entirely, but except in very rare cases such votes are not held to require the resignation of the Federal Council or any of its members, or, for that matter, as involving any censure upon them.

By the budget for the year 1914, which as the last one drawn up prior to the war may be

Budget-  
ary  
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## GOVERNMENT OF SWITZERLAND

taken as normal, appropriations were made as follows: interest and sinking fund, 9,313,700 francs; general administration (i.e., expenses of National Council, Council of States, Federal Council, Federal Chancellor, and Federal Court), 1,605,700 francs; and the departments as follows: political, 1,187,544 francs; interior, 16,639,540 francs; justice and police, 2,353,025 francs; military, 45,752,790 francs; finance and customs, 9,677,240 francs; commerce, industry, and agriculture, 16,581,971 francs; posts and railways, 572,480 francs; miscellaneous, 1,756,010 francs; total, 105,440,000 francs. Of this total the military department alone expended forty-three per cent, the two departments of the interior and of commerce, industry, and agriculture, nearly sixteen per cent each.

Effect  
of the  
war on  
Swiss  
finances

Prior to the outbreak of the European war the financial system of the Swiss federation seemed to be attaining satisfactory results. Counting in railroads and the alcohol monopoly, the government spent in 1910, all together, the relatively large amount of three hundred million francs. All of this, however, except ninety millions was returned by the ordinary receipts of the business undertakings in which the state was engaged, and the profits of these further reduced the burden of taxes by four and a half millions. There was no complaint of extravagance or corruption in any branch of the administration. The national debt was moderate,

## SWISS FEDERAL FINANCE

amounting to 124,430,000 francs in 1910.<sup>1</sup> On the other hand, the "Federal Fortune," or state property, was valued the same year at 236,582,750 francs. This does not include special funds and foundations for beneficent purposes in the hands of the federation, amounting to 110,075,250 francs. Relying as the central government did largely upon customs duties, the people scarcely felt the burden of its support. "The earlier flourishing finances of the federation," as President Schulthess said in a recent speech, "were the secret of its popularity."<sup>2</sup>

There was, however, one very serious defect in the system; namely, its reliance to an extreme degree upon the revenue from customs. Even in time of peace far-sighted statesmen had frequently pointed out the necessity of widening the tax basis of the federal government in order that it might further expand, and particularly that it might meet the obligations of a progressive policy of social reforms. Against them, however, were constitutional texts, traditional maxims, and a characteristically democratic aversion to new tax burdens. It was a fiscal system that was just keeping its nose above water upon which the war broke in 1914.

With the outbreak of hostilities, imports into

<sup>1</sup> Per capita, 33.25 francs (\$6.42). For the same year the debt of our own federal government amounted to \$11.35 per capita.

<sup>2</sup> *Berner Bund*, May 21, 1917.

## GOVERNMENT OF SWITZERLAND

Increase  
in national  
debt

Switzerland fell off largely, and with them, of course, the revenue from customs. Industry was crippled, tourists left the country, and railroads, posts, and telegraphs suffered in sympathy. Some recovery there has been, but not enough to offset materially the increase in certain unavoidable items of federal expenditures. Chief among these is the cost of mobilizing a large part of the army for the protection of the boundaries and the maintenance of neutrality. To the end of May, 1917, the debt on this score alone amounted to 575,000,000 francs, and this enormous total was increasing by at least fifteen million francs a month. Deficits from the ordinary operations of the government, for the war years 1914 to 1917 inclusive, amount to 125,000,000 francs.<sup>1</sup> Interest and sinking fund charges to retire this new debt totaling seven hundred millions within forty years would require forty-five million francs annually. As a result of this mountain of debt, which the war is heaping ever higher, the systematic reform of federal finances has become the paramount issue of Swiss politics.

Some partial steps have already been taken to this end. In all government services economies have been undertaken except as regards high-prices-increments. The war-exemption tax has been doubled. Fees for export privileges and

<sup>1</sup> This does not include the deficits from the operation of the federal railroads. See Chapter IX.

## SWISS FEDERAL FINANCE

profits on the various state monopolies have also contributed something. Small returns have even been secured from the new war-time food monopolies, although these, of course, are operated primarily not for profit but to keep prices down and to assure a sufficient supply to the masses of the people.

On June 6, 1915, a most remarkable amendment to the constitution was adopted by a well-nigh unanimous vote of people and cantons.<sup>1</sup> It permitted the federal government to defy tradition once by laying a direct tax on incomes and property. The subjects of this tax, the rates, which were to be progressive in character, and the exemptions to be allowed were all stated in considerable detail in the amendment itself. Moreover, it was specifically provided that after the tax had been levied once, the amendment authorizing it was to cease to be effective.

The  
"one-  
time  
war  
tax"

The tax law enacted under this amendment<sup>2</sup> provided for progressive rates ranging from one per mille on properties valued between ten and fifteen thousand francs up to fifteen per mille on properties valued at 2,300,000 francs and over. It also provided for rates rising from one half of one per cent on incomes of between 2500 and 2700 francs to eight per cent on incomes exceeding 160,000 francs. As a revenue producer this measure exceeded anticipation, yield-

<sup>1</sup> A. S. XXXI, 336.

<sup>2</sup> *Ibid.*, XXXI, 445, Law of December 22, 1915.

## GOVERNMENT OF SWITZERLAND

ing all together ninety million francs. But it was open to one serious defect; namely, that by accepting it the federation morally bound itself not to trench a second time upon the tax preserves of the cantons.

**The war-  
profits tax**

Although the income from the "one-time war tax" was unexpectedly large, it became necessary to open up new sources of revenue almost immediately. The next step was the enactment of a war-profits tax.<sup>1</sup> This is levied against the profits made since January 1, 1915, by business undertakings in excess of their average profits for the last two business years completed before July 1, 1914. A minimum of such excess profits up to 10,000 francs and ten per cent of the average profits earned before the war is exempted. From profits above these limits the state takes twenty-five per cent. The war-profits tax is expected to yield nearly ninety million francs for the two years 1915 and 1916. Nine tenths of this is to go to the federation, one tenth to the cantons.

**The  
federal  
stamp  
tax**

In 1917, the constitution was again amended<sup>2</sup> to permit the federation to levy a stamp tax on securities, receipts for insurance premiums, bills of exchange, freight bills, and other commercial papers exclusive of those employed in real estate transactions and the mortgaging of real estate. Out of the net income from the tax authorized by this amendment, one fifth

<sup>1</sup> A. S. XXXII, 351, Law of September 18, 1916.

<sup>2</sup> Art. 41 ii. Adopted May 13, 1917.

## SWISS FEDERAL FINANCE

is to be paid to the cantons. It is expected to yield between fourteen and fifteen million francs annually. Not the least of the advantages of this new fiscal measure is the fact that it will establish a single federal tax uniform throughout the whole country, in place of the fourteen widely divergent cantonal taxes now in effect.

Although the new stamp tax will be paid almost entirely by the propertied classes, it was opposed by the Socialists. They favor heavy direct progressive taxes on income and property as a means of meeting the present financial necessities of the federation, and have recently proposed by initiative an amendment to that effect. Leaders of the other parties assert that property and incomes are already taxed stiffly enough by the cantons. Further, they hold that an invasion of this field by the central government would mean the undermining and ultimate disappearance of the cantons. "*L'impôt direct fédéral serait la fin des cantons.*" At present, when Switzerland is torn by racial sympathies with the belligerents on both sides of the great war, it would be extremely dangerous, in the opinion of the non-Socialists, to advocate tax measures which could be interpreted, especially in the French and Italian sections of the country, as involving an assault upon cantonal autonomy.

In addition to the foregoing tax proposals, the Federal Council advocated the creation of a tobacco monopoly whereby it was hoped to



## GOVERNMENT OF SWITZERLAND

realize twenty million francs a year.<sup>1</sup> Considerable opposition was developed to this project in the legislative commission to which it was referred, and the idea of a monopoly has been abandoned in favor of heavy tobacco taxes. The Federal Council has also proposed the extension of the alcohol monopoly to include liquors distilled from wine, fruits, and roots. It is estimated that three million francs a year might be obtained in this way. By a reform of the military exemption tax, which has remained the same since 1878, an additional two millions might be secured. If the war continues far into 1918, however, all these new sources combined will prove inadequate.

The  
future of  
Swiss  
finance

The problems of Swiss federal finance are, therefore, by no means solved at the present time. They are very serious problems, but there seems to be no doubt of the ability of the country to provide the necessary resources. On the whole, the leadership of the Federal Council has been admirable. Possibly more might have been accomplished by the earlier advocacy of a systematic reorganization of the fiscal system. Some delay was occasioned by the plea that it would be impossible to determine how much new taxation was necessary until the end of the war. After four years of war, however, it is manifest that reform must begin at once, regard-

<sup>1</sup> *Botschaft des Bundesrats über die Tabakbesteuerung, Neue Zürcher Zeitung, March 5, 1917.*

## SWISS FEDERAL FINANCE

less of the size of the burden ultimately to be shouldered. The present problem is largely that of educating the people to meet the situation promptly and adequately. Heavy as Switzerland's debt will no doubt prove to be, it will not be so great in proportion as the debts of the powers which actually engaged in the war.

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## CHAPTER IX

### COMMUNICATION AND TRANSPORTATION: NATIONAL OWNERSHIP AND OPERATION OF RAILWAYS

Slowness  
of begin-  
ning of  
railroad  
enterprise

**R**AILROAD beginnings were somewhat later in Switzerland than elsewhere in Europe. The country offered no large economic resources for exploitation, the physical difficulties to be overcome were considerable, and finally the political disturbances of the thirties and forties discouraged large investments. Only fifteen miles of railroad were in operation when the constitution of 1848 was adopted.

With the establishment of stable political conditions, interest in transportation problems developed rapidly. The new constitution conferred upon the federal government the right of expropriation, and also the right to construct at its own expense or to aid by subsidies public works in the interest of the federation or a large part of the same.<sup>1</sup> In accordance with the first of these grants an expropriation law was passed, May 1, 1850. Under the direction of the Federal Council a study of the railroad needs of the country had already been undertaken by

<sup>1</sup> Art. 21, Constitution of 1848; Art. 23, Constitution of 1874.

## COMMUNICATION AND TRANSPORTATION

a body of experts, and in the autumn of the same year a thorough technical and financial report was published.

At this time the great question at issue was whether the construction and operation of the railroads should be undertaken by the federation alone, or by the federation and cantons jointly, or whether, finally, the field should be left open to private capital. The financial resources of the youthful federation were so undeveloped as to make the first course impracticable. Joint action by federation and cantons was strongly favored by the Federal Council, but the Federal Assembly, fearing the risks of a business whose possibilities were at that time only dimly perceived, decided the case in favor of private enterprise.<sup>1</sup>

The subsequent history of railroads in Switzerland may be divided into three great periods: (I) Private Enterprise under Cantonal Control, 1852-1872; (II) Private Enterprise under Federal Control, 1872-1901; and (III) National Ownership and Operation, from 1901 on.

### I. *Private Enterprise under Cantonal Control* (1852-1872)

Under the act of July 28, 1852, the federation did not even reserve the right of granting franchises, which was conferred upon the cantons.

The  
railroad  
law  
of 1852

<sup>1</sup> Law of July 28, 1852.

## GOVERNMENT OF SWITZERLAND

It retained, however, certain regulatory functions, chiefly to insure expedition in military movements. Thus in 1854 the Federal Council issued an "order concerning the technical unity of Swiss railways," which fixed the standard gauge, radius of curvature, height in the clear of tunnels, height and width of cars, etc. The law of July 28, 1852, also required railroads to carry without charge letters and sealed packages not exceeding 5 kg. (11 pounds), to carry railway mail cars and postal clerks free, to permit the building of telegraph lines along the right of way without compensation, and to transport the army and military equipment at one half the lowest regular rates. In return the railroad secured the privilege of expropriation, and the right to import free of duty for ten years rails and other equipment and supplies, such as wheels, axles, locomotives, and coal.

On their part the cantons exercised the franchise-granting powers freely and with rather marked benevolence to the private railway companies. In addition to considerable financial support, the latter were usually granted exemption from cantonal and communal taxes, and received guaranties that competing roads should not be established in the same region or canton. These two valuable rights, which have been sustained consistently by the federal courts, gave rise to much confusion and controversy later. Considering the virtual abdication by the feder-

## COMMUNICATION AND TRANSPORTATION

ation of its power in this field and the small size of the cantons, it is not remarkable that the railroad companies succeeded in withdrawing themselves largely from the supervision both of the former and the latter. In consequence there was frequent complaint regarding the establishment of new lines, the sale of existing lines to other companies, unsatisfactory connections at junction points, rate questions, and the arbitrary handling of liability cases by the companies. For the régime of private enterprise it must be conceded, however, that it rapidly covered the country with a network of railways more extensive than that contemplated by the plan of 1850.

Defects  
of  
private  
manage-  
ment

Toward the end of this period neighboring nations began to take steps toward state purchase of railroads, which profoundly influenced public opinion in Switzerland. The project of building a tunnel through the St. Gotthard, which came up about the same time, was manifestly too large for cantonal enterprise. Accordingly the federation negotiated a treaty with Italy, October 15, 1869, and authorized the Federal Council to execute its provisions through the Gotthard Railway Company. This would have meant the creation of two kinds of railway law, one for the Gotthard line, the other for the remaining railways of the country. Objection was made by the Federal Council to this dual control, and on December 23, 1872, a new federal law was

## GOVERNMENT OF SWITZERLAND

enacted which materially changed the Swiss railroad situation.

### II. *Private Enterprise under Federal Control* (1872-1901)

The  
railroad  
law of  
1872

The most important provision of the law of 1872 was that transferring the franchise-granting power from the cantons to the federation. It is true that before exercising this power the federal authorities were bound to consult the canton or cantons affected. If the latter protested, the central government might nevertheless proceed with the matter, subject to the right of the canton to build and operate the road on its own account. Other important powers secured to the federal government by the law of 1872 included supervision of construction costs and finances generally; the right to compel the building of double tracks, extensions, etc., with compensation to the company; the collection of an annual charter fee proportionate to the net profits; and the right in time of war to take over and operate the railroads, subject of course to compensation.

Following the law of 1872 there was much vigorous federal action on railroad matters. One year later it became necessary to establish a special department of railroad and trade in the Federal Council. Two laws passed in 1878 and 1889 dealt with pension and saving funds,



VIADUCT, BERNINA RAILROAD





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and another law, passed in 1890, with hours of labor. Under the latter heading a maximum day of twelve hours was established, with a rest of one hour at about the middle of the period. Employees were also given fifty-two days free from duty each year, at least seventeen of which were to fall on Sundays. Transportation of ordinary freight (not fast freight) was prohibited on Sundays.

In 1873, a charter law defined in great detail the procedure to be followed in this field. One of its provisions required a majority of railroad directorates and other committees to be composed of Swiss citizens residing in the country. This was the first attempt to deal with foreign influence in railroad management, — a sore point with the Swiss from the start. But the most important of its provisions dealt with the purchase of the lines, fixing the earliest time at which it could take place at May 1, 1893, and thereafter at any time, three years' notice to be given. This date was chosen because it coincided with the expiration of a number of important franchises. The price to be paid was stated at twenty-five times the average annual net profits for the ten years immediately preceding the giving of notice. Lower ratios were stated in case purchase did not take place earlier than 1918 or 1933. In no case, however, was the price to be less than the amount originally invested, minus renewals and reserve funds.

Looking  
forward  
to  
purchase

## GOVERNMENT OF SWITZERLAND

Under the conditions of purchase just quoted, it is evident that exact definition of the terms "annual net profits" and "amount originally invested" becomes a matter of prime importance. Looseness in this particular might so enhance the cost of the roads as to make their purchase by the government an act of supreme financial folly. To guard against this danger, the federation armed itself with the two accounting laws of 1883 and 1896.<sup>1</sup> The first of these aimed primarily to secure uniformity and exactness in railroad accounting, the second to define with the greatest precision and detail the meaning of annual net profits and capital investments. In case of differences between the government and the private companies, appeal could be taken to the federal court. Much of the success of nationalization when it finally came about was due to the foundations laid by these two laws.

The method of purchase laid down in the legislation of 1873 did not preclude the employment of other methods. One of these, known as the "*système de pénétration*,"<sup>2</sup> consisted simply in the purchase of shares of railroad stock by the government with the intention of securing a controlling interest. Negotiations to this end

<sup>1</sup> The law of 1896 was sustained by referendum vote, October 4 of that year. English translations of these two laws are presented in Vrooman's "American Railway Problems."

<sup>2</sup> Micheli, "State Purchase of Railways in Switzerland," p. 361.

## COMMUNICATION AND TRANSPORTATION

with the Northeastern Company broke down in 1887-8, but a few years later the federation obtained a large block of stock in the Jura-Simplon road. Encouraged by this success, the government undertook to purchase the entire stock of the Central system. But the referendum was invoked against the project, and on December 6, 1891, it was defeated by a vote of more than two to one. This result was interpreted, fallaciously as the referendum of 1898 showed, to indicate popular hostility to government ownership. In reality it was due to the widespread conviction that the federation was being asked to pay too high a price for the Central Railway shares. At any rate the referendum of 1891 put an end to the policy of penetration.

*Failure  
of  
penetration*

Thrown back upon the method of purchase proposed in 1873, the Federal Council drew up and submitted to the Assembly on March 25, 1897, a bill "concerning the acquisition and operation of railways on the account of the federation, and the organization of the administration of the Swiss federal railways."<sup>1</sup> Following its usual practice in the case of important legislative measures, the Federal Council accompanied the bill with an extended message explaining and defending it in detail.<sup>2</sup> After exhaustive

*Nationalization  
of  
railroads  
approved  
by  
referendum  
vote,  
1898*

<sup>1</sup> An English translation may be found in Vrooman's "American Railway Problems," pp. 315-331.

<sup>2</sup> "Botschaft des Bundesrats an die Bundesversammlung betreffend den Rückkauf der Eisenbahnen vom 25. März, 1897."

## GOVERNMENT OF SWITZERLAND

discussion and comparatively few amendments by the two houses, the bill was passed, October 15, 1897. The "anti-acquisitionists" at once resorted to the referendum, and the matter was thus thrown open for discussion by the whole Swiss people. One of the most spirited campaigns in the history of the country ensued. The bill was supported strongly by the dominant Radical party organization, and, with some reservations, by the Socialists, who saw in railroad nationalization an opportunity "to win out of capitalism as conquered territory, a domain which has up to the present time remained subject to its sway." A majority of the Catholic Conservatives and Liberal Conservatives opposed purchase, partly on economic grounds, partly because they feared it would cause an enormous increase of power in the hands of the federal government. On February 20, 1898, so overwhelming a majority of the popular vote was cast in favor of national ownership and operation that it surprised both acquisitionists and anti-acquisitionists. Switzerland thus entered upon the biggest economic experiment in her history, with the assurance that it had the support of the great mass of the people behind it.

## COMMUNICATION AND TRANSPORTATION

### III. *National Ownership and Operation,* (1901 on)

The law of 1898 provided specifically for the purchase of the five great trunk lines of Switzerland, with an aggregate length of 1598 miles. A few standard-gauge roads of minor importance, some narrow-gauge roads, and some mountain roads were not included, but the government was given power to make further purchases as occasion warranted. In the Federal Council's message the total cost of the five trunk lines was estimated at 964,176,000 francs. The prices actually paid were determined by agreement in all cases except that of the Gotthard Company, which exercised its right of appeal to the Federal Court.<sup>1</sup> All together the government actually paid 1,065,127,000 francs for the five trunk lines, the excess over its original estimate being due to no error of calculation but to the rapid and favorable development of the railroad business after purchase had been decided upon.<sup>2</sup> For the additional one hundred million francs corresponding values were received. By subsequent purchases and by extensions of existing lines the mileage owned had grown to 1705 by

<sup>1</sup> The lines were taken over as follows: Central Railway, July 1, 1901; Central and Northeastern, January 1, 1902; United Swiss, July 1, 1902; Jura-Simplon, May 1, 1903; and the St. Gotthard not until May 1, 1909.

<sup>2</sup> *Graphisch-statistischer Verkehrs-Atlas der Schweiz*, 2d ed., 1915, p. 5.

## GOVERNMENT OF SWITZERLAND

1912, in addition to which 155 miles were operated by the government. In the latter year the total railway debt was 1,426,000,000 francs, but the increase of the interest burden was less than that of the income per mile.<sup>1</sup>

Organi-  
zation  
of  
railroad  
adminis-  
tration

In the organization of the lines taken over by the state the fundamental principle laid down by the law of 1898 was that, so far as possible, railroad administration should be kept separate from other branches of the government. Political influence was thus reduced to a minimum. The accounts of the federal railways are kept entirely distinct from those of the federation, and it is therefore possible to ascertain the financial condition of the former at any time.

For administrative purposes Switzerland is divided into five railroad circuits or divisions. In each circuit there is a directory composed of three members. Above the circuit directories there is a general directory of five members, located at Bern. Members of both circuit and general directories are appointed by the Federal Council. The actual management of the federal roads is in the hands of those directories, local matters being intrusted to the circuit directories and matters of wider scope to the general directory.

Paralleling these managerial bodies there is a system of advisory boards, the composition and functions of which are most interesting. In each circuit there is a circuit railway council

<sup>1</sup> *Politisches Jahrbuch*, 1913, p. 629.

## COMMUNICATION AND TRANSPORTATION

of from fifteen to twenty members, four of whom are chosen by the Federal Council, and the remainder by the cantons. Above these local councils is an administrative council of fifty-five members, twenty-five of whom are chosen by the Federal Council, twenty-five by the cantons, and five by the circuit railway councils. The law of 1898 directs that in choosing these councilors the agricultural, trading, and industrial interests of the country shall be represented. While the law was under discussion, the Federal Council also gave verbal assurances that railroad employees and other interests would be given places. The circuit railway councils and the administrative railway council have advisory and supervisory powers on all questions concerning railway affairs in their respective fields. Primarily their purpose is to bring to the attention of the actual directing boards a knowledge of railroad conditions and public opinion thereon, as well as a knowledge of the conditions and opinions of those business interests which make the greatest use of railroad facilities. They insure publicity and thorough discussion of transportation questions, and "lead the patrons of the railways to feel that those who pay the rates have a share in the responsibility for their making."<sup>1</sup> Admirable as many of its features

<sup>1</sup> A. N. Holcombe, "First Decade of the Swiss Federal Railways," in "Quarterly Journal of Economics," 26: 352 (February, 1912).



## GOVERNMENT OF SWITZERLAND

are, however, the Swiss system of railroad organization described above has shown itself somewhat complicated and cumbersome in practice. Administrative reforms designed to simplify it are widely advocated and will doubtless be undertaken in the near future.

Above the specific agencies for railway administration stand the Federal Council and the Federal Assembly. In addition to its appointive powers already noted, the former presents to the legislature the annual railway budget, accounts, and business reports; makes motions regarding the extension of lines and services; and deals with pension, aid, and sick funds. The Federal Assembly approves the budget, accounts, and business reports; loan and amortization plans; and agreements for acquiring new lines or operating secondary lines. Further, it legislates generally on rates, acquisition and building of railroads, and remuneration of employees.

In its message of 1897, the Federal Council advocated nationalization on the ground that it would make possible the extension and improvement of the railway system, reduce rates, increase wages, and improve labor conditions. Authorities on the subject generally agree that all these anticipations were substantially realized before the end of the first decade of state ownership and operation. Figures dealing with mileage extension are quoted above. New trains were scheduled, speed was increased, the supply

## COMMUNICATION AND TRANSPORTATION

of rolling stock was extended, roadbeds were improved, and new terminals and station buildings were constructed.

Freight classification was simplified, and the practice of rebating, which existed under private management, was stopped. The lowest schedule of passenger rates in effect under the old régime was adopted as the standard under federal management. In 1913, normal fares on round-trip tickets were as follows: third class, 1.01 cents (American) per mile; second class, 1.55 cents; first class, 2.42 cents. Baggage was charged for extra, at the rate of five centimes (1 cent) for 220 pounds. Third-class accommodations are very largely used for short-distance travel; second class is quite comfortable enough for longer distances. First class offers little over second except style and exclusiveness, but it is Swiss policy, as the above figures show, to make those who can afford such luxuries pay rather stiffly for them. Commutation tickets, circular travel tickets, and season tickets which enable the holder to travel at will for fifteen, thirty, or forty-five days, are issued on even more favorable terms than the extremely low rates quoted above. Unlimited travel tickets good for three, four, or twelve months, at still lower rates, are also offered and very largely used by commercial travelers. Dire financial losses were predicted as a result of the reduced fares granted by the government, but passenger

Freight  
and  
passenger  
rates  
under  
govern-  
ment  
operation

## GOVERNMENT OF SWITZERLAND

traffic grew so rapidly that receipts were largely increased.<sup>1</sup> Great ability and artistic skill have been shown in advertising the tourist attractions of the federal railways, and agencies for this purpose have been established in five foreign countries.<sup>2</sup> A stock argument against state ownership is that it lacks initiative. In view of the innovations made to attract travelers, this criticism cannot be made against the Swiss federal railroads.

Pro-  
gressive  
labor  
policies  
of Swiss  
federal  
railways

Perhaps in no way has Swiss experience under nationalization been more suggestive than in connection with its labor policies. Shortly after the purchase of the roads the various grades of employees were classified, and maximum and minimum rates of pay prescribed for each class, with an increase for every three years of service until the maximum was attained. The total number of officials and employees in 1916 was 35,300.<sup>3</sup> When one remembers the excellent administrative traditions of the Swiss, it is not difficult to understand that these positions have not been misused for political purposes. Nor are positions created needlessly for deserving party workers. There have been no strikes or threats of strikes, although labor organizations are recognized by the management itself. The

<sup>1</sup> Vrooman, *op. cit.*, p. 141.

<sup>2</sup> The New York office of the Swiss Federal Railroads is at 241 Fifth Avenue. From it folders, maps, time-tables, and other means of information may be obtained at any time.

<sup>3</sup> *Neue Zürcher Zeitung*, No. 726, April 25, 1917.

## COMMUNICATION AND TRANSPORTATION

highest rates paid by private companies at the time of purchase were made the basis of the wage scale adopted by the government. Owing to the great rise of general prices from 1899 on, the unions of railway employees petitioned for an increase of wages in 1906, submitting many family budgets in support of their claim. After a thorough investigation by federal officials, the payment of a "high-prices-increment" was ordered, amounting in the case of married persons and others with dependants upon them who received less than 4000 francs a year, to 100 francs additional; and for all other employees with less than 4000 yearly, to 50 francs additional. In its message to the Federal Assembly advocating this increase, the Federal Council took occasion to comment upon the courteous tone in which the men formulated their petition and the reasonableness of their requests. Payment of high-prices-increments was continued for the two following years, extended in 1910, and taken into account in the new wage scale established by the law of June 23, 1910. More recently the great increase in the cost of living due to the war has led to a repetition of the policy of paying increments in addition to regular wages. In all these wage adjustments men with smaller incomes have received more in proportion than those with larger incomes. Under private management fancy salaries were paid to certain favored officials. These have not been continued under

## GOVERNMENT OF SWITZERLAND

state ownership. If they had been continued, they would have contrasted sharply with the modest stipends paid to even the highest officials in other branches of the federal government.

Under federal management also the working day has been further reduced to eleven hours, which is shorter than the customary central European working day. Train crews must be given at least ten hours of unbroken rest in each twenty-four, and all other employees at least nine hours. More liberal provisions have been made regarding annual vacations and a weekly day of rest.

Fiscal  
policies  
of  
Swiss  
federal  
railways

In nationalizing Swiss roads it was not the intention to create a fiscal monopoly which should yield a large revenue to the government. On the contrary, it was distinctly understood that the income of the roads should be used first to pay off the debt incurred at their purchase, and after that to provide for such improvements in service, reductions of rates, and increases of wages as were possible. According to the law of 1897, the loans necessary for the purchase of the railroads were to be repaid according to a fixed amortization plan, at the latest within sixty years.

While the substantial achievements of the federal railroad management in other directions are generally conceded, there has been a great deal of controversy as to whether the debt could be paid off within the limit of time set. A masterly analysis of the situation by Professor Holcombe indicates that during the first nine



RAILROAD STATION, LUZERN



25

## COMMUNICATION AND TRANSPORTATION

years of operation the plans of the federal government to this end were being realized successfully. It must be remembered that his figures showing profits actually resulting represent "surplus profits over and above the interest charges (averaging about  $3\frac{1}{2}$  per cent) on the entire funded debt and the amortization charges on the same. . . . The sum of interest and amortization charges represents not much over 4 per cent upon the funded debt, and is much less than the interest and dividend charges upon any profitable American road."<sup>1</sup> It is largely because of this advantage in lower cost of debt service that the Swiss government has found it possible under normal conditions to reduce rates, increase wages, improve the service, and while paying off the debt at the rate determined in advance, still make both ends meet. As used in the following table quoted from Professor Holcombe, the test of financial success, therefore, is "the proximity of the profit and loss item to zero."

Year	Profit (+) or loss (-) actually resulting (francs)
1902	+ 4,422,420
1903	+ 1,030,682
1904	+ 60,735
1905	+ 651,734
1906	+ 2,548,523
1907	+ 429,812
1908	- 5,823,166
1909	- 4,091,020
1910	+ 7,948,758

<sup>1</sup> Holcombe, *op. cit.*, p. 356.



## GOVERNMENT OF SWITZERLAND

It will be observed that favorable results were secured with the exception of the two years 1908 and 1909, when Switzerland, like the United States, was suffering from business depression coupled with high prices. The St. Gotthard road, which at that time was still under private management, suffered as severely as the federal railways. Under normal conditions even when broken in upon by periods of hard times, the Swiss government was redeeming its pledge to pay for the roads out of profits within the sixty-year period.

Effect  
of war  
on Swiss  
railways

Financial results quite as favorable as the foregoing were attained during the years 1911, 1912, and 1913. Since the outbreak of war in 1914, however, the federal railways have had to meet conditions of unprecedented severity. As the "turn-table of Europe," Switzerland handled in times of peace enormous volumes of traffic in transit between her great neighbors. The war measures of the belligerents reduced this business to a minimum. At the same time tourist travel fell off greatly. The cost of all railroad supplies and materials rose to heights never before attained. This was particularly true of coal, all of which Switzerland had to import from Germany. With the deterioration of transportation facilities in that Empire, it became impossible to secure a sufficient supply even at prevailing war prices, and on February 20, 1917, the government was obliged to reduce

## COMMUNICATION AND TRANSPORTATION

the number of trains from twenty to thirty per cent. To meet its financial difficulties the management has introduced economies into every branch of the service, building credits in particular being cut down. It has not, however, reduced wages; on the contrary it has renewed the policy of high-prices-increments in order to help railway employees meet the increased cost of living due to war.

Prior to nationalization foreign shareholders held a majority of stock in three of the five trunk lines. One of the most effective arguments in favor of purchase was that it would abolish foreign influence and place the railroads entirely under control in the interest of the nation as a whole. Whatever may be the merit of this argument in times of peace, it has certainly justified itself since the outbreak of war. Already habituated to operate as a unit, the railroad system of the country had the further advantage of complete harmony with other branches of the government. Under these circumstances it was possible for the railroads to mobilize the army with the least possible delay, and for the government to carry on to the best advantage the delicate diplomatic negotiations necessary to secure the largest possible supply of coal not only for the railroads but for all other purposes. Unity of railway management in the common interest has also proved invaluable in procuring supplies of food and raw materials without which

## GOVERNMENT OF SWITZERLAND

the life and industry of the people would have suffered severely. In spite of financial losses incident to state ownership under war conditions, it is the opinion of competent Swiss authorities that the sacrifices made in purchasing the railroads were never so completely justified as they have been since 1914. "With the army, mightily strengthened by the new military organization, and with the national bank, the federal railways form the trifolium of institutions which since the outbreak of war have attained dominating significance in our political and economic life."<sup>1</sup>

### *Water Power*

"White  
coal"  
of  
Switzer-  
land

It is probable that Switzerland's difficulties since 1914 in securing coal supplies for railway and other purposes will add impetus to projects for using the "white coal" of the country, — that is, the water power of glacier-fed torrents. Approval has already been given for the employment of power derived from this source on the Erstfeld-Bellinzona division of the Gotthard line. To electrify the entire railroad system will require one hundred million dollars, but the interest and sinking fund charges on this sum would be much less than the cost of coal even at before-the-war prices. There is ample water power available for the purpose. It is estimated that the streams of the country would supply

<sup>1</sup> A. Welti, "Politisches Jahrbuch," 1915, p. 655.

## COMMUNICATION AND TRANSPORTATION

one million horse power for immediate use, and that by the construction of canals and storage reservoirs an additional million could be developed. Operation of the railroads would require only about 250,000 horse power.

Prior to 1908 franchises for the development of power from hydraulic sources were granted by the cantons. In addition to private companies, a number of coöperative associations, municipalities, counties, and even cantons had entered this field. On the whole charters were carefully drawn, and the public interest was well safeguarded. There were no grants in perpetuity, rights of repurchase were always included, and payment was exacted for the privileges enjoyed. Provisions were even inserted in some charters obligating the companies not to mar the natural beauty of the country by their installations. In many cases cities and cantons subscribed for stock in private water-power companies with the intention of converting them ultimately into public undertakings. It was no part of the Swiss program to allow private monopoly, intent only on profits, to thrust itself between the people and one of their greatest natural resources.

Although only a small part of the water power of the country was developed, electricity generated from this source came to be more freely employed in Switzerland than in any other country. Care was taken everywhere to secure the lowest possible rates for small consumers

**Safe-  
guarding  
of public  
interest**

## GOVERNMENT OF SWITZERLAND

Wide  
use of  
electricity

both in rural and in urban districts. As a result electricity is used not only by street railways and large manufacturing enterprises, but also to furnish motive power for the domestic industries which still survive so largely in Switzerland. Current is so widely distributed and so cheap that peasants light their stables as well as their chalets with it. They also operate pumps, churns, food cutters, and threshing machines by electric motors, thus obviating a large part of the drudgery of country life. In some cantons country roads are lighted for great distances by electricity.

Federal  
control  
of  
water  
power

Under cantonal control of water-power rights there were, however, certain disadvantages. Lack of uniformity of franchise terms, conflicts of jurisdiction, waste in investments, and inadequate development of hydraulic resources were the most serious. To cure these defects a monopoly of all the water-power resources of the country in the hands of the federal government was suggested. The plan received much influential support but was too sweeping for immediate adoption. Of course it was opposed by representatives of the "*Kantönligeist*," or "little cantonal spirit," as the Swiss rather satirically call the extreme states' rights frame of mind. In 1908, a compromise was effected. By use of the initiative an amendment to the constitution was adopted which placed the utilization of water power under the supervision

## COMMUNICATION AND TRANSPORTATION

of the federation.<sup>1</sup> Henceforth federal legislation is to prescribe general rules necessary for the protection of the public interest and for the appropriate utilization of water power. With this exception the regulation of water power is vested in the cantons. In the case of streams under the jurisdiction of more than one canton, where agreement cannot be reached with regard to a common franchise, the federation may issue it. The same holds good for streams which form boundary lines. Fees or dues for the use of water power belong to the cantons or to those entitled thereunto under cantonal legislation. For franchises issued by the federation, fees and dues are determined by the latter, after a hearing is given to the cantons concerned and with reasonable consideration of their legislation. In the case of other franchises, fees and dues are determined by the cantons within the limits fixed by federal legislation.

Energy derived from water power may be delivered in foreign territory only upon the approval of the federation. The latter is empowered to issue legislative regulations with regard to the transmission and delivery of electrical energy. In general the federation secured, by the water-power amendment of 1908, important powers of legislation in a wide new field, while the cantons were satisfied with consider-

<sup>1</sup> Article 24 ii. A law passed December 22, 1916, provides in detail for the execution of this amendment.

## GOVERNMENT OF SWITZERLAND

able administrative reservations and the financial returns. Whether the necessary uniformity can be secured without further increase of federal power remains to be seen.

### *Roads and Bridges — Motor Traffic*

Although primarily under cantonal authority, the federation nevertheless exercises "general oversight over those roads and bridges in which it is interested."<sup>1</sup> Because of the international importance of their Alpine roads, four cantons receive subsidies from the central government, the amount of which is fixed in the constitution itself, for maintenance and snow removal.<sup>2</sup> The cantons still exercise control over automobile traffic, and their regulations on the subject represent extremely divergent opinions. In districts which cater to tourists the motorist is popular; in mountain districts where his car may frighten the peasant's horse at the brink of a precipice he is cordially hated. Material improvement has resulted, however, from a concordat on the subject into which all but seven cantons have entered.<sup>3</sup> To secure uniformity in this field, the Federal Council suggested an amendment to the constitution in 1910, conferring upon the federation power to issue police regulations for automobiles and motor

<sup>1</sup> Art. 37.

<sup>2</sup> Art. 30.

<sup>3</sup> A. S. XXX, 89 (1914); XXXI, 143, 164 (1915).

## COMMUNICATION AND TRANSPORTATION

cycles. Although much discussed in the last seven years, cantonal jealousy has hitherto prevented its passage. It is interesting to note that the Federal Council added to the proposed amendment a clause giving to the federation legislative power over air traffic. So far this clause has shared the fate of the rest of the amendment.

Proposed  
federal  
amend-  
ment  
on  
motor  
traffic

### *Posts, Telegraphs, and Telephones*

Down to the end of the eighteenth century the posts of Switzerland, as in the rest of Europe, were handled either as monopolies leased by the state, or as privileges possessed by noble families, or finally as a private business carried on by the mercantile classes. After the Act of Mediation (1803) they passed under the control of the cantons, where they remained until 1848. By the constitution of that year they were transferred to the federation, which in return for the cession obligated itself to pay an annual indemnity to the cantons. As a part of the general financial adjustment between federation and cantons made in 1874, this indemnity was canceled, so that the postal system is now wholly federal and free of incumbrance. Already in 1851, a law annexed telegraphs to the postal administration, and this action was confirmed by the constitutional revision of 1874.

At present ordinary letters weighing less than 8½ ounces pay 2 cents to any part of Switzerland.

Postal  
rates



## GOVERNMENT OF SWITZERLAND

If within a radius of 6.2 miles, the letter rate is only one cent. Even before the establishment of the federation in 1848, the postal service included a parcels post. Rates have always been low; at present for parcels under  $1\frac{1}{4}$  pounds from any post office in Switzerland to any other the charge is 3 cents; for parcels between  $1\frac{1}{4}$  and  $5\frac{1}{2}$  pounds, 5 cents; between  $5\frac{1}{2}$  and 11 pounds, 8 cents. In addition to letters and parcels the postal department does a considerable business transporting passengers either by special coupés ordered for the occasion or by the diligences (stagecoaches) which are still used to carry the mail in remote mountain districts.

Tele-  
graph  
rates

Telegraph rates also are low. For all inland messages a fixed charge of 6 cents is made, plus  $\frac{1}{2}$  cent for each word, address and signature included. Thus a ten-word message with eight words of address and signature, costing at the lowest 25 cents in the United States, would cost only 15 cents between any two offices in Switzerland. Delivery is free within a radius of one kilometer (.62 mile) from the receiving station.

As soon as telephones demonstrated their practical utility, they were declared by a resolution of the Federal Council to fall within the federal telegraph monopoly.<sup>1</sup> For a time the

<sup>1</sup> Resolution of February 18, 1878. By inference wireless telegraphy also is included in the state monopoly. In practice wireless stations must have a permit from the state. Cf. Burckhardt, "Kommentar," 2d ed., 1914, p. 329.

## COMMUNICATION AND TRANSPORTATION

government was undecided as to the best form of management for the new means of inter-communication. It granted one franchise to a private company in Zürich, but soon after decided to monopolize the field for itself. Accordingly the Zürich franchise was repurchased, and since that time (January 1, 1886), the entire telephone business of Switzerland has been owned by the federal government and operated in connection with the telegraph administration. Tele-  
phones

It has been the consistent policy of the Swiss government to secure the widest possible extension of the service not only in cities but in rural districts as well. From the beginning arrangements were made to facilitate telephonic connection of remote villages with the nearest telegraph offices. In 1895, there was one telephone in use for every 129 inhabitants, as compared with one to about every 245 inhabitants in the United States. In 1913, there was one subscriber to every 40 inhabitants.

A series of rate reforms, worked out between the Federal Council and Federal Assembly, aided greatly in the popularization of the telephone system. By the law of December 7, 1894, a "consistent and scientific schedule" was adopted, which gave such general satisfaction that it has remained in effect ever since. According to its provisions subscribers pay a lump charge of 100 francs (\$19.30) the first year; 70 francs (\$13.51) the second, and 40 francs (\$7.72)

## GOVERNMENT OF SWITZERLAND

Fiscal  
and  
labor  
policies

for each year thereafter. In addition they pay 5 centimes (one cent) for each local call.

As in the case of railroads, the Swiss government has been a model employer of labor in its postal, telegraph, and telephone service.<sup>1</sup> By lowering rates and by extending and improving the service of the latter departments it has constantly striven for a social end, — the widest possible diffusion of intelligence among the people. At the same time it has sought to earn modest annual profits, and has succeeded in doing so with the exception of a few unfavorable years. From the postal service the net income was 2,700,351 francs in 1900; 4,496,118 francs in 1905; and 2,568,079 francs in 1910. Telegraphs and telephones together showed a loss of 897,718 francs in 1900, but earned net profits of 416,000 and 519,220 francs in 1905 and 1910 respectively.<sup>2</sup> Summing up results for the fifty-two years from 1855 to 1906 inclusive, Professor Holcombe writes: "At the end of the period the people of Switzerland own a well-preserved telegraph undertaking free of all charges, and a thriving telephone business, the assets of which exceed the liabilities by nearly 25 per cent."

<sup>1</sup> Cf. A. N. Holcombe's "Public Ownership of Telephones on the Continent of Europe," Ch. XIV.

<sup>2</sup> Burckhardt, "Kommentar," 2d ed., p. 361.

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## CHAPTER X

### SWISS SOCIAL LEGISLATION AND ADMINISTRATION

Epi-  
demic  
diseases

THE oldest provision of the Swiss constitution which falls within the field of social legislation is that dealing with communicable diseases. Even prior to 1848, the confederation was forced to take action against epidemics, particularly of yellow fever and cholera. The federal constitution of that year devoted an article to this general subject, which was strengthened at the revision of 1874. In order to bring tuberculosis clearly within its scope, the article was again rewritten and extended in 1913, the new version being accepted at the referendum held on May 4 of that year.<sup>1</sup> In its present form it reads, "The federation shall have power to enact laws to combat communicable or widely diffused diseases of men and animals."

Under these gradually widening constitutional powers a number of laws have been passed. One of the earliest of these, enacted in 1872, is devoted to animal plagues.<sup>2</sup> A bill passed both

<sup>1</sup> Art. 59, Constitution of 1848; Art. 69, Constitution of 1874. For the earlier form of the latter see Dodd, II, 69; for the present form, Burckhardt's "Kommentar," 2d ed., p. 636.

<sup>2</sup> A. S. X., 1029.

## SOCIAL LEGISLATION AND ADMINISTRATION

houses in 1881 dealing with diseases of a threatening epidemic character, but was overwhelmingly voted down at a referendum held July 30 of the following year, because it provided for compulsory vaccination. In 1886, however, a federal law prescribing measures to combat several violently contagious diseases was placed upon the statute book.<sup>1</sup> The central government has further manifested its interest in this subject by subsidizing medical research into the nature and cure of a number of diseases, among which are goiter and cretinism, — once endemic in Switzerland but now pretty well wiped out. Much is also being done in the field of preventive medicine by the cantons, which in spite of the large powers conferred upon the federation in 1913 still continue to bear the major part of the cost of the health police service.

A wide extension of the activities of the central government into a closely related field was made possible by the constitutional amendment adopted July 11, 1897. It gave the federation power to enact laws concerning traffic in food products, and in other articles of use or consumption in so far as they might be dangerous to life or health. The cantons execute such laws under the supervision and with the financial support of the federation. On the other hand, the regulation of imports at the frontier with the above purposes in view shall be under the con-

Pure-  
food  
laws

<sup>1</sup> A. S. IX, 277.

## GOVERNMENT OF SWITZERLAND

trol of the federation. By this amendment the federal government was given power not only to enact pure-food laws, but also to legislate against adulterated wines; against eating, drinking, and cooking utensils made of materials dangerous to health; against toys, rugs, clothing, and other goods colored or painted with poisonous colors; and finally against petroleum and other similar commodities which when improperly refined are liable to explode or cause fires. A law of December 8, 1905, provides in detail for the execution of the manifold purposes of this amendment.<sup>1</sup>

Child  
labor

One of the most valuable of the new constitutional articles introduced at the revision of 1874 was that conferring upon the federation power to enact uniform laws with regard to the employment of children in factories, the length of the working day of adults therein, and the protection of laborers engaged in unsanitary and dangerous manufactures (Art. 34).<sup>2</sup> It is interesting to note that the federal government of Switzerland is thus expressly authorized to legislate on child labor, whereas the federal government of the United States possesses this power, if at all, only as implied by the interstate commerce clause.

Under the authority of Article 34, a comprehensive factory act was passed early in 1877,

<sup>1</sup> A. S. XXII, 337.

<sup>2</sup> Another clause of this article gives the federation power to legislate upon and supervise the business of emigration agencies, and private undertakings in the field of insurance.

## SOCIAL LEGISLATION AND ADMINISTRATION

and ratified by a small majority of the popular vote at the referendum held October 21 of that year. So important are its provisions regarding the labor of women and children, the length of the working day, night work, Sunday work, etc., that this law justly deserves to be called "the Swiss factory worker's Magna Charta."<sup>1</sup> It remained upon the statute book until June 18, 1914, when it was superseded by a law establishing still higher standards.<sup>2</sup>

"The  
Swiss  
factory  
worker's  
Magna  
Charta"

In its present form the factory act devotes particular attention to hygiene and the prevention of accidents. It fixes a normal work day of not more than ten hours, and on days preceding Sundays or holidays of not more than nine hours. Women and children under eighteen may not be used for night or Sunday work. The Federal Council is given power to designate those lines of industry in which they cannot be employed at all. In all cases, even where two shifts of workers are employed, women and children under eighteen must be given a night's rest of at least eleven continuous hours, including the period from ten at night to five in the morning. Children under fourteen may not be employed in factories, nor may those above that age who are legally obligated to attend school daily. In the case of children under sixteen the time spent in school, in receiving religious instruction,

<sup>1</sup> C. W. A. Veditz, "Child Labor Legislation in Europe," p. 345.

<sup>2</sup> A. S. XXX, 535.



## GOVERNMENT OF SWITZERLAND

and in the factory, all combined, shall not exceed ten hours per day. It must be remembered that while the above provisions of the new factory law apply uniformly throughout Switzerland, they do not prevent the establishment of higher standards by cantonal legislatures. Much has been done in this way by various cantons.<sup>1</sup> On the other hand, complaints of insufficient inspection and laxity of local officials in the enforcement of the factory laws are apparently as common in Switzerland as in the United States.

Although great good resulted from the foregoing legislation, the industrial development of Switzerland soon outran the narrowly defined grant of power conveyed by Article 34 of the constitution of 1874. The two houses desired to legislate upon trade unions, industrial courts, the protection of workingmen outside the factory, unemployment, — in short, the whole relation of employer to employee, not even excluding the thorny subject of strikes and lockouts. It was difficult to find constitutional authorization for much of this legislation, while, on the other hand, some of it seemed clearly in conflict with the guaranty of freedom of trade and industry (Art. 31). An amendment was offered in 1894 to cure this difficulty. It was expressed in highly general terms, and said nothing definite regarding the proposal to make labor organization compulsory in certain lines of industry. Both

<sup>1</sup> Veditz, *op. cit.*, pp. 347-372.

## SOCIAL LEGISLATION AND ADMINISTRATION

those who favored and those who dreaded this innovation attacked the amendment and defeated it at the referendum of March 4, 1894. Nevertheless, the need for increased federal legislative power grew more and more acute with the years. Finally an amendment essentially similar to that rejected in 1894 was accepted by an overwhelming popular majority on July 5, 1908. The new article (34 iii) reads, "The federation shall have power to establish uniform regulations in the industrial field." Upon this sweeping grant of power the central government should be able to erect a broad and thoroughgoing system of factory legislation. Advantage has already been taken of it in part by the Factory Act of June 18, 1914, referred to above.

Uniform  
industrial  
regu-  
lation

"Switzerland was one of the first countries in Europe to adopt the theory of compensation of workmen for industrial accidents, instead of the theory of liability of employers for negligence only."<sup>1</sup> From 1875 on, this principle was applied by a series of laws to those industries in which accidents are most likely to occur. There were, however, certain lacunæ in this legislation which were productive of much litigation and antagonism between employers and employees. To remedy these defects an epoch-making amendment to the constitution was adopted, October 29, 1890. It empowered the

<sup>1</sup> Frankel and Dawson, "Workingmen's Insurance in Europe," p. 74.

## GOVERNMENT OF SWITZERLAND

federation to establish by law insurance against sickness and accidents, due regard being had for existing sick funds. The federation might also declare participation in this insurance obligatory upon all or certain classes of the population.<sup>1</sup>

In-  
surance  
against  
sickness  
and  
accidents

In accordance with the terms of this amendment an elaborate sickness and accident insurance bill was passed by both houses late in 1899, to which was afterwards added a system of military pensions. Upon submission to the people at the referendum of May 20, 1900, this whole mass of legislation was overthrown by a vote of more than two to one. Few popular vetoes have aroused more regret in Switzerland than this one. It seemed a flat reversal of the favorable decision upon the amendment of 1890. It destroyed at one blow the culminating effort of twenty-five years of agitation for sickness and accident insurance. Yet it signified no opposition to such insurance in principle, but solely to certain details in the law which sought to put it into effect. The latter was thought to be too obligatory and comprehensive; the insurance system it contemplated had too much the appearance of a state monopoly. Existing sickness societies felt that the proposed law rode roughshod over their interests, and consequently threw the great weight of their influence against it.

By this popular decision Swiss labor was continued in its dependence upon the old liability

<sup>1</sup> Art. 34 ii.

## SOCIAL LEGISLATION AND ADMINISTRATION

laws and the numerous voluntary sickness societies. The latter had enjoyed a phenomenal development. They were of every possible description; some of them were open to both sexes and admitted children, others restricted their membership, — as, for example, to members of a given trade, religious sect, or even political party. In 1903, there were 2006 such societies, with an enrollment of 505,947, or fifteen per cent of the total population of the country. With so large a following it was evident that no scheme of government insurance against sickness could afford to neglect the interests of these societies.

After an interval of eleven years a new federal sickness and accident insurance bill passed the Federal Assembly. It had been carefully drafted to avoid the popular objections to its predecessor, and upon submission to referendum, February 4, 1912, was approved by a decisive popular majority.<sup>1</sup>

The first forty articles of the new law are devoted to sickness insurance. In this part of the act it is the evident purpose of the legislature, first, to avoid centralization and compulsion so far as possible; and, second, to make the existing sickness societies the chief factor in the new order of affairs. It is expected that the member-

Sickness  
societies

<sup>1</sup> A. S. XXVIII, 353. An English translation of this law may be found in the Bulletin of the U. S. Bureau of Labor, Whole No. 103 (August 1, 1912). Cf. also the *Ergänzungsgesetz* of June 18, 1915, A. S. XXXI, 381.

## GOVERNMENT OF SWITZERLAND

ship of the latter will speedily reach 700,000 persons, or twenty-one per cent of the population, under the stimulus of the new law. Every sickness society which satisfies its provisions is entitled to federal subsidies. According to an official estimate these will amount to nearly \$650,000 per year, and this figure will be brought up to \$900,000 by other expenditures of the federal government in this connection, chiefly for supervision. The cantons may declare sickness insurance compulsory either generally or for certain classes of persons; they may establish public sickness funds, taking into consideration existing relief funds; and they may delegate these powers to their respective communes. Establishment of compulsory insurance by the cantons is encouraged by a provision that cantons which do this and which also assume responsibility for the payment of the contributions of indigent insured persons, shall receive subsidies from the federation equal to one third their disbursements.

No sickness society may be refused recognition because of its economic, religious, or political restrictions. On the other hand, such restrictions "shall not be construed to the prejudice of a Swiss citizen soliciting membership in a fund at his place of residence if he cannot gain admission at said place of residence to any fund whose general conditions of admission he fulfills." Both sexes must be admitted on equal terms.

## SOCIAL LEGISLATION AND ADMINISTRATION

The right of free transfer from one fund to another is carefully defined and safeguarded.

Further, in accordance with the federal law, sickness societies must insure to their members at least medical care and medicines or an indemnity of not less than one franc for each day of absolute inability to perform labor. The period of membership necessary to entitle members to benefits shall not exceed three months. Medical attendance and medicines shall be provided from the beginning of a properly reported case of sickness; indemnities from the third day of sickness, to continue for at least 180 days out of a year if necessary. Childbirth is considered sickness if at the time of confinement the mother has been a member of the fund for at least nine months. In maternity cases benefits continue for six weeks, with a nursing benefit of at least 20 francs if the child is being nursed at the breast four weeks after the expiration of the period of assistance.

Insuring  
of medi-  
cal care  
and  
medicines

Under schemes of sickness and accident insurance free choice of a physician is likely to cause considerable administrative difficulty. Switzerland takes advanced ground on this point, however. The law also provides that after consultation with representatives of sick societies and associations of physicians and pharmacists, cantonal authorities shall fix rate lists showing maximum and minimum charges for every service of the physician and for all medicines.

## GOVERNMENT OF SWITZERLAND

### Accident Insurance Institu- tion

In sharp contrast with the decentralized system of sickness insurance is the monopolistic Swiss Accident Insurance Institution at Luzern, also established by the law of 1912. The Accident Insurance Institution is to have an administrative council appointed by the Federal Council and consisting of forty members, twelve of whom are to represent compulsorily insured persons, sixteen to represent owners of private enterprises employing compulsorily insured persons, four to represent voluntarily insured persons, and eight to represent the federation. This council acts as a miniature legislature, deliberating upon and deciding such important matters as rules, risks, rates, calculation of reserve, and annual budget. The actual management of the Institution is in the hands of a directorate, appointed by the Federal Council upon the recommendation of the administrative council of forty. Agencies of the Institution are to be opened in the different sections of the country, each canton being entitled to one. Sickness societies may be employed as agents, and by their coöperation it is hoped to prevent simulation and the collection of double benefits. One of the most interesting features of the insurance law is a provision calling upon trade unions with a membership extending over the greater part of the country for advice not only regarding men proposed for membership in the council but also on a number of important questions of management.

## SOCIAL LEGISLATION AND ADMINISTRATION

Insurance against accident is made compulsory upon all employees in a large number of occupations where accidents are common, including transportation, postal service, certain classes of factories, building trades, explosives, installing or removal of machinery, railroad building, tunneling, excavation, mining, and quarrying. Voluntary insurance against accidents may be granted to any person fourteen years of age and over who resides in Switzerland and is not compulsorily insured.

Compulsory and voluntary insurance

The federation pays one half the expenses of administration of the Accident Insurance Institution, and in addition it advances to the latter a working capital of five million francs and a reserve fund of equal amount. A sharp distinction is made between occupational and non-occupational accidents. Premiums for insurance against the former are paid entirely by the employer. Premiums for non-occupational accidents are paid, three fourths by the insured and one fourth by the federation. A very interesting provision of the law is that requiring the Federal Council to prepare a list of substances which cause occupational diseases. A disease caused by any such substance is deemed an accident under the law.

In case of accident the insured is entitled to medical attendance, drugs, surgical apparatus, and necessary traveling expenses. Indemnity for loss of time begins the third day after the



## GOVERNMENT OF SWITZERLAND

In-  
surance  
benefits

injury. It amounts to 80 per cent of earnings, the latter, however, being computed as not exceeding 14 francs (\$2.70) a day. No other European country allows so high a percentage. If permanent total disability supervenes, an annuity amounting to 70 per cent of the yearly wages of the insured is substituted for the indemnity. In case of death a contribution of 40 francs (\$7.72) is made toward the funeral expenses, and survivors receive annuities not exceeding all together 60 per cent of the annual earnings of the insured.

Number  
insured

Under the old liability laws 428,000 Swiss workmen were entitled to benefits. The new accident insurance scheme should at once include 600,000 workmen, or about 19 per cent of the population. It is estimated that the total cost for accident insurance will be 22,752,000 francs a year, of which employers will pay 63 per cent; employees, 21 per cent; and the federal government, 16 per cent, or about \$700,000.

In addition to its provision against sickness and accidents, Switzerland has made some interesting experiments in other insurance fields. Since 1893, the municipality of Bern has maintained a scheme for insurance against unemployment, but similar efforts on the part of the canton of St. Gallen (1894) and the Basel Labor Federation (1901) soon failed.<sup>1</sup> No federal provision is made for old-age insurance. However,

<sup>1</sup> Cf. Frankel, *op. cit.*, p. 385.

## SOCIAL LEGISLATION AND ADMINISTRATION

a few cantons and about 7½ per cent of the sickness societies are dealing with the matter on an annuity basis.<sup>1</sup> Homes for the aged poor are maintained by a number of cantons. From the income derived from their *Allmends* or common lands, many communes make fixed contributions toward the support of this class of dependants. Owing to the wide distribution of small property holdings, there is probably less of old-age poverty in Switzerland than in other European countries.

The Swiss federal government has not hesitated to recognize labor unions and to avail itself of their coöperation, as in the case of the Accident Insurance Institution cited above. A still more striking illustration is afforded by the creation of the office of Secretary of Labor in 1887. There is no portfolio of labor in the Federal Council, and the most closely related department, that of National Economy, is largely preoccupied with other matters. The Grütli Association first suggested that the government be asked for a subsidy to provide an office to undertake the scientific study of labor conditions, and, upon occasion, to mediate in labor disputes. Later the *Arbeiterbund*, a national league of labor unions regardless of their particular affiliations with Socialist, Catholic, or Radical groups, put the full force of its large membership behind the suggestion. As a result the government finally

Federal  
recog-  
nition  
of labor  
unions

<sup>1</sup> *Ibid.*, p. 340.

## GOVERNMENT OF SWITZERLAND

agreed to appropriate 5000 francs annually for the proposed labor secretariat. It was well understood that the activities of the chief of this new office would be largely under the direction of the *Arbeiterbund*; that, in effect, he would be "a private and exclusive advocate of the interests of labor in the pay of the government, — a state-paid agent without official standing."<sup>1</sup> As a civil service test, applicants for the position of Secretary of Labor were required to draw up a plan for their own future official activities. The most meritorious paper was submitted by Herr Hermann Greulich, a Socialist and former bookbinder of Zürich, who thereupon received the appointment and has ever since occupied the office with conspicuous success. In spite of its delicate and engrossing duties, Herr Greulich has found time to serve as member of his cantonal legislature and of the National Council as well, and has also taken a prominent part in the councils of his party.

Other  
social  
reform  
policies

Under the head of social legislation one should perhaps include the action taken by the Swiss federal government against gambling and capital punishment. Further, the alcohol monopoly, in addition to its fiscal purpose, was advocated on the grounds that it would diminish the evils of intemperance. Of course this was the prime motive of the anti-absinthe amendment. In the list of positive efforts for social betterment

<sup>1</sup> Dawson, "Social Switzerland," p. 67.

## SOCIAL LEGISLATION AND ADMINISTRATION

the Swiss educational system, and the hearty interest and support which it commands among the great mass of the people, are immensely potent forces. Some conception of the Swiss federal government's financial contribution in a single line, that of sickness and accident insurance, may be afforded by the fact that on a population basis the federal government of the United States would have to expend thirty-eight million dollars annually to equal it. But it is in resourcefulness of conception and careful economy of execution that the relief work of the Swiss people is chiefly notable. Their history during the last few decades proves over and over again the close relationship between the ideals of democracy and of social justice.

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## CHAPTER XI

### THE SWISS ARMY SYSTEM

Un-  
versal  
military  
obli-  
gation

“**E**VERY Swiss is bound to perform military service.” Upon this article of the constitution of 1848<sup>1</sup> the present army system of Switzerland is based. Certain requirements as to number, organization, and instruction of troops were added in order to secure some degree of uniformity in the service. Apart from these general provisions, however, the earlier formulation of the constitution left military administration in time of peace almost wholly in the hands of the cantons. And by another article, which still stands,<sup>2</sup> the federation was expressly forbidden to maintain a standing army.

The weakness of this highly decentralized system soon became apparent. During the Franco-Prussian War especially the Swiss feared that their territory might be violated by one of the belligerents. As a consequence, the revised constitution of 1874 gave a much larger share of attention to military affairs, strengthening considerably the powers of the central government. A law enacted the same year put into effect these new provisions of the constitution.

<sup>1</sup> It appears as part of Article 18 in the constitution of 1874.

Art. 13.

## THE SWISS ARMY SYSTEM

In 1895, an effort was made by constitutional amendment further to centralize control of the army. After a heated campaign between "militarists" who emphasized the need of preparedness for defense and "anti-militarists" who feared the "Prussianization" of the country, the amendment failed by a popular vote of 269,751 to 195,178, the cantons dividing 17½ against the measure and 4½ for it. Somewhat later, agitation was renewed by the military party, and in 1907 a comprehensive law was enacted reorganizing the army. By the terms of this law the period of ordinary military training was somewhat lengthened, but the increased burden was placed largely in the earlier years of service where it would be least felt. Considerably higher standards were established for the training of officers. Petitioners to the number of 88,245 promptly demanded a referendum on the new law, which was held November 3, 1907, with the result that it was sustained by a vote of 329,953 to 267,605, — a sweeping reversal of the referendum of 1895. The army act of 1907, which thus rests upon the approval of a decisive majority of the people, still remains the basis of the Swiss military system.

Move-  
ment  
to  
centralize  
army  
control

Although not officially a part of that system, preparation for it really begins in the primary schools of the country. At six years of age, on the very day a boy enters school, he takes up a course of physical training designed not only

School  
work  
prepara-  
tory  
to  
military  
training

## GOVERNMENT OF SWITZERLAND

to bring about his maximum individual development but also to drill him to perform class and team exercises with vigor and precision. As far as the weather allows, this work is done in the open air. For pupils of ten and over all the schools of the country use the same textbook, — a "Manual of Gymnastics for Preparatory Military Instruction," — and their methods and results in this department are subject to the supervision of the federal government. Instruction is given by male teachers, who receive special preparation for this work in the various Swiss normal schools and in special courses at the universities. Many such teachers, by the way, hold commissions in the army. The thoroughgoing democracy of the Swiss public schools, where children of all classes work and play together, and the teaching in these schools of civics and especially of the nation's history, with its century-long record of patriotic sacrifice and struggle, do much to form the spirit manifest in the citizen army of the country.

While still in the schools students between the ages of eleven and sixteen may join volunteer cadet corps to practice the manual of arms, marching drills, and setting-up exercises. The federal government supplies each cadet with a light model of the regular army rifle and a certain amount of ammunition for target practice. At sixteen the student may join a more formal organization of the same general character,



INFANTRY EXERCISES OF SWISS CADETS





## THE SWISS ARMY SYSTEM

except that the regular army rifle is used and there is more target practice. In some cantons boys of high-school age are required to join such corps. Army officers voluntarily give instruction to the cadets, employing Sundays and other spare time for this service.

In his nineteenth year every young Swiss is subjected to an examination to determine his fitness for military duty. This examination is both physical and mental, the latter part covering such branches as reading, composition writing, arithmetic, civics, and the history and geography of Switzerland. About 63½ per cent pass at the first test, 22½ per cent at subsequent tests, leaving about 14 per cent permanently rejected. Those who fail in the intellectual tests are sent to night schools to brush up their knowledge. Physical defectives are put through a course of special training for a year prior to reëxamination. Young men who remain partly deficient physically may be enrolled in auxiliary branches of the service as couriers, trench diggers, drivers, stable boys, or clerical workers. If the physical incapacity is complete, they must pay a yearly military exemption tax, which is also exacted from those who for special reasons are released from service prior to the age of forty. The burden thus imposed is by no means inconsiderable, being levied in part against income and property.<sup>1</sup>

Exami-  
nations  
to deter-  
mine  
military  
fitness

An interesting by-product of the examination

<sup>1</sup> See Chapter VIII.

## GOVERNMENT OF SWITZERLAND

of the youth of the country prior to entering upon military service is the educational effect resulting from the publication of the percentages of failures. These are eagerly scanned throughout the federation and are taken to indicate in some measure the efficiency of the instruction of the various cantons, of particular schools, and even of individual teachers. The resulting spirit of emulation has done much to raise educational standards throughout the republic.

Élite,  
Land-  
wehr,  
and  
Land-  
sturm

Liability for military service extends from the beginning of the year in which the citizen reaches the age of twenty to the end of the year in which he is forty-eight. Three army classes are recognized: the Élite or Auszug (first-line troops), from the twentieth to the thirty-second year inclusive; the Landwehr, from the thirty-third to the fortieth year inclusive; and the Landsturm, from the forty-first to the forty-eighth year inclusive, — officers to the end of their fifty-second year or later if they so request. There are also assigned to the Landsturm soldiers of the Élite and Landwehr who become unfit for service in these classes, and volunteers who have proved their physical fitness and ability in rifle practice. In case of war or threatened war the Federal Council may order the recruitment of men fit for service, of eighteen or nineteen years of age. While unfit in most cases for work as part of a field army, Landsturm units could be usefully employed in time of war as territorials,

# THE SWISS ARMY SYSTEM

TABLE SHOWING SERVICE PERFORMED BY VARIOUS ARMS

Under the Law of 1907<sup>1</sup>

	Élite (Auszug) or Line			Landwehr			Landsturm	
	Number of days' recruit training at age of 20	Repetition courses			Repetition courses			Total days' training
		Number	Days each	Total number of days	Number	Days each	Total number of days	
Infantry.....	65	7	11	77	1	11	11	153
Artillery.....	75	7	11	77	1	11	11	163
Cavalry.....	90	8	11	88	..	..	..	178

<sup>1</sup> The training of engineers and of men in the medical, supply, and transport services, not included in the above table, differs but slightly from that of infantrymen. Cavalrymen pass from the Élite to the Landwehr at thirty years of age.

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## GOVERNMENT OF SWITZERLAND

undertaking such duties as guarding the lines of communication and policing the interior of the country.

The standard scheme of training for soldiers of various classes and branches of the service is shown in the table on page 255.

Periodic  
inspec-  
tion of  
arms

The figures presented in the above table cover time of instruction only, not including days of assembly and dismissal, which amount to two per course. Outside periods of training the Swiss soldier is also obliged to present himself once each year for an inspection of the arms and equipment which are left in his charge throughout his term of service by the government. In the case of an infantryman, for example, five such inspections occur while he is in the Élite, seven while in the Landwehr, and eight while in the Landsturm. A few minutes only are required on each of these occasions, and as the inspections take place in the soldier's home commune he need spend only a short time coming or going. Failure to keep arms and equipment in proper condition or to be present at the time prescribed may be penalized by military arrest for short periods.

The Swiss military system rests on the same bases as those of its great neighbors in that it is universal and compulsory. It differs sharply from them, however, in the amount of time demanded from citizens. In the German army, for example, the shortest term of service on a

## THE SWISS ARMY SYSTEM

peace basis, that of the infantry, required 123 weeks.<sup>1</sup> This amounts to more than five times the total period served by a Swiss soldier of the same class. Moreover, the latter is called from home not to exceed sixty-five days at any one time, whereas the German infantryman served two whole years at the age of twenty and twenty-one. As a consequence Germany had on hand in time of peace an enormous standing army, whereas in Switzerland one can hardly speak of a standing army at all except with reference to a comparatively small number of professional officers and instructors who are permanently engaged in military service.

The question naturally arises whether in so brief a time the citizens of Switzerland can be trained to meet successfully the levies of its powerful neighbors. Military authorities differ widely on this question. It can be definitely answered, of course, only by war, which fortunately the Swiss have been spared with any foreign power since the Napoleonic period, long before the present army system was established. Certain general considerations bearing upon the matter may be ventured. Whatever may be thought of the brevity of the Swiss period of

**Efficiency  
of Swiss  
military  
training**

<sup>1</sup> Fritz-Konrad Krüger, "Government and Politics of the German Empire," p. 153. There is also a one-year volunteer service privilege in the German army, but it is conditioned upon the passing of a rather severe examination and the possession of private means.

## GOVERNMENT OF SWITZERLAND

training, there is general agreement as to its intensiveness and extremely practical character. At the recruit school, each day except Sunday brings with it eight hours of hard drill or instruction. There is also much night work, such as night firing, intrenching, and maneuvers. Barrack-ground drill is avoided, so far as possible all work being done out in the open country. Every effort is made to develop not only the ability to act in masses but also the highest capacity and initiative on the part of each individual. The young infantryman, for example, is taught the necessity of discipline, propriety, and punctuality as a matter of course, and he is also taught to be a marksman, to extricate himself rapidly from difficulties likely to occur on the march or in combat, to dig himself in with every advantage which the ground may afford, and so on. Instruction in other branches of the service is carried out on the same principles, due attention being paid to the peculiarities of each branch. Every arm of the service is taught to take advantage of the mountainous nature of the country which it has to defend. It should be remembered, moreover, that the young Swiss does not join the colors as an entirely raw recruit, but brings with him a thorough school training in gymnastics and in many cases the experience gained in cadet corps. So far as possible ability acquired in civil life is turned to account in the army. "The doctor and apothecary serve in



SWISS MOUNTAIN INFANTRY AT RIFLE PRACTICE



24

## THE SWISS ARMY SYSTEM

the medical corps, the electrician, engineer, and mechanic in the engineers, the 'bus and cab drivers as artillery drivers, the farmers and horse-owning classes in the cavalry, butchers and bakers in the supply departments, and so on."<sup>1</sup>

There must also be an extremely high percentage of sharpshooters in the Swiss army. Rifle practice is taken up in early youth and pursued throughout manhood with all the interest and passion of a national sport. Contests between crack teams of various communes attract as much attention in Switzerland as league ball games in the United States, while the national competitions in which the best shots of each canton are pitted against each other arouse all the fervor of a world series. Communes are encouraged to build standard rifle ranges by subsidies from the federal government. Rifle clubs which conform to governmental regulations also receive subsidies. According to Delmé-Radcliffe there were, in 1906, 3732 such clubs, with 220,951 members. During the years when they are free from service, officers and enlisted men of the *Élite* and *Landwehr* are required to perform under inspection a prescribed firing drill. About sixty shots a year with a fixed minimum of points is the rule. Those who fail to meet the prescribed standard are called in for three days without pay or transportation allowance, during which time they must strive

Swiss  
sharp-  
shooters

<sup>1</sup> Delmé-Radcliffe, p. 23.

## GOVERNMENT OF SWITZERLAND

to improve their marksmanship. Under these conditions it is not remarkable that Swiss rifle clubs have won the highest honors in seventeen out of eighteen international meets.

### Training of officers

All Swiss army officers rise from the ranks and must first undergo the regular training as outlined in the table above for some one branch of the service. In addition they must take various supplementary courses of instruction at officers' schools, the number of such courses increasing with the rank sought. Some measure of the additional burdens imposed upon those seeking officers' positions is afforded by the fact that in the first two years of service a corporal must serve 89 days, and a lieutenant 238 days more than a private. Further courses and periods of probation are required for promotion to the rank of first lieutenant, captain, major, and so on. Like all official salaries in Switzerland, the scale of pay for soldiers and officers is extremely low. In addition to quarters and meals, privates receive 16 cents and corporals 30 cents per day of active service. For commissioned officers the scale per day of active service is as follows: lieutenant, \$1.40; captain, \$2.00; major, \$2.40; colonel, \$4.00; commander of division, \$6.00; general (in chief), \$10.00. Commissioned officers also receive an allowance of twenty cents a day for food. Except for privates and non-commissioned officers, a considerably lower rate of pay prevails for each day of training service.

## THE SWISS ARMY SYSTEM

A provision of the Swiss military law makes it obligatory upon any one nominated for a commission to accept. It is admitted, however, that before any one is nominated, the question as to whether he is financially able to afford it must be considered, as well as his qualifications for command.

By far the greater majority of commissioned army officers are regularly engaged in business and the professions. The frequent calls made upon them by the service must therefore represent considerable personal sacrifices in the aggregate. There are only about 250 professional officers in Switzerland, counting as such those who devote their whole time to military duties. Many of them serve as instructors in the recruit schools and the higher schools for officers. Others command brigades, divisions, or army corps.

As was noted above, part of the administration of the Swiss army is in the hands of the cantons. Comparatively little remains, however, of the large military powers once possessed by the latter. They keep lists of those subject to military service, equip the troops in part, and upon nomination of the superior military authorities, promote officers of infantry units up to the rank of captain. Officers of higher rank are appointed by the federal government. The cantons may dispose of troops of their territory when the federation does not make use of this power.

Share of  
cantons  
in  
military  
adminis-  
tration

## GOVERNMENT OF SWITZERLAND

Subject to the control of the Federal Assembly, the Federal Council has charge of the military establishment of the republic. One of the members of the Federal Council, at present M. Camille Decoppet, is assigned to head the military department. In ordinary times the Swiss army is without a commander in chief. Whenever an emergency arises which requires mobilization upon a considerable scale, the Federal Assembly chooses a general in chief, who takes supreme control of the military situation under the direction of the Federal Council. At the outbreak of the present war, Ulrich Wille was elected to this position.<sup>1</sup> It was the first time the Swiss army had had a commanding general since 1871.

Cost  
of Swiss  
army

Prior to the outbreak of the European war the Swiss federal government was spending on its army 45,000,000 francs, or nearly \$9,000,000, annually. While this was much the largest single item in the budget, it amounted to only \$2.40 per head of the population. It should be remembered, however, that part of the cost of the country's military system is met by the cantons. Thus, in the case of an infantryman under training, about one third of the cost is at cantonal expense. Of course the mobilization of a large part of the Swiss army due to the present war has made necessary much greater

<sup>1</sup> His only predecessors were General Herzog during the Franco-Prussian War, and General Dufour during the anti-Prussian uprising over Neuchâtel in 1857.

## THE SWISS ARMY SYSTEM

expenditures.<sup>1</sup> With the fate of other small nations that have been invaded, before their eyes, the Swiss may well consider the cost of training and maintaining their soldiery upon a war footing a thoroughly justified and not too heavy insurance premium.

In spite of the admirable results attained at such moderate cost by the Swiss military system, it has been severely criticized at times, chiefly by the Socialists. Only recently that party has gone over to absolute anti-militarism. Most of its leaders formerly agreed that for defensive purposes an army was necessary, but they wished to reform it on democratic lines. They criticized it on the ground that higher officers were drawn almost entirely from the well-to-do and professional classes, and were therefore likely to become infected with a narrow class spirit similar to that prevailing in monarchical armies. In so large an establishment occasional cases of mistreatment or overtraining of men were certain to occur, and these were always made the most of in the Socialist press. The existence of a feeling antagonistic to army abuses was manifested by the decisive rejection at a referendum in 1903 of an amendment to the penal code, popularly denounced as the "Maulkrattengesetz." Rightly or wrongly, the people were convinced that the purpose of this law was to muzzle the press and thus prevent the public discussion of military

Socialist  
criti-  
cisms  
of the  
army

<sup>1</sup> See Chapter VIII.

## GOVERNMENT OF SWITZERLAND

abuses. The occasional use of the soldiery in case of strikes is hotly denounced in Switzerland as often as it occurs. Undoubtedly also some hardship is experienced by workmen and their families as a result of the considerable number of repetition courses that they are obliged to take. The higher grades of employees can easily use their summer vacations for the purpose, but some employers are said to show little consideration to common laborers in this connection. So far as hardship to the families of recruits is concerned, the present military law provides that in case of need such families shall be assisted by the communes in which they reside, the assistance to be given through official channels other than those employed in the administration of charity. The commune is reimbursed for expenditures of this character, three fourths of the amount being paid by the federation and one fourth by the canton. Soldiers' families are also insured by the federation against financial loss due to sickness, accident, or death in the service, but such pensions are extremely modest in amount.

The spirit of democracy universally prevailing in Switzerland would seem to be a sufficient bulwark against militarism and Prussianization. Moreover, the people possess in the referendum a very effective weapon against any encroachments of this sort. On two occasions, when they thought they were so menaced, it was successfully used. Considering the unquestioned



SWISS SKI PATROL, MATTERHORN DISTRICT



22

## THE SWISS ARMY SYSTEM

devotion of the Swiss to peace and the long period during which they have maintained it, there would seem to be no real danger of militarism from within. The present army system itself rests upon the basis of a popular majority. Moreover, it has been built up during a period when the Swiss people were developing along democratic and progressive lines as rapidly as any nation in the world.

While the Swiss army is small compared with the enormous totals of its powerful neighbors, it nevertheless represents a very large proportion of the male manhood of the country. Estimates differ considerably as to its maximum size in case of emergency. In 1908, Delmé-Radcliffe placed the *Élite* at 145,000 strong, the *Landwehr* at 90,000, and the *Landsturm* at 45,000 armed and 260,000 unarmed men. For 1913, the year preceding the outbreak of the European war, the actual enrollment in the *Élite* was stated at 143,220.<sup>1</sup> On the same basis in proportion to the population, the United States would have available in time of peace over three and a half million first-line troops. If the entire available strength of the Swiss army in war reaches 500,000, the United States proportionately should be able to raise twelve and a quarter million men.

At the outbreak of the present war the Swiss army was ordered to the frontiers. Estimates as to the number of men mobilized range from -

<sup>1</sup> "Statesman's Year Book," 1915, p. 1384.

## GOVERNMENT OF SWITZERLAND

Mobilization  
at  
outbreak  
of  
present  
war

✓ 200,000 to 300,000 or more. Naturally the Swiss government is extremely reticent as to this and other details of troop movements. Foreign observers were not allowed to go to the frontiers. American military attachés who studied developments from the interior of the country were, however, greatly impressed by the swiftness and sureness with which mobilization was effected. Evidently it proceeded in every detail along the lines of a most comprehensive and well-thought-out plan. According to a recent statement by the chief of the military department,<sup>1</sup> the Swiss have been observing with great care the strategy of the present war. As a result of their study they are making changes in their army system far in excess of the program of 1907, particularly with regard to heavy artillery, machine guns, and aviation.

✓ All considerations of natural aptitude, patriotic spirit, training, and mobility indicate, therefore, a high degree of efficiency in the Swiss army in proportion to the size of the country. In judging its final utility one must remember that it is designed solely as a defensive force. Generations and centuries have elapsed since the Swiss have thought seriously of aggression and conquest. Nor is it likely that Switzerland will be attacked at any time by a power free of other enemies, or without friends ready to rally to the support of

<sup>1</sup> Interview with M. Camille Decoppet, *Neue Zürcher Zeitung*, February 5, 1917.

## THE SWISS ARMY SYSTEM

the little republic. It is scarcely true, therefore, as a great and somewhat overbearing statesman of a neighboring power once remarked, that "his army could swallow Switzerland any morning before breakfast."

Modern warfare has become a conflict of wealth, industrial organization, and highly technical weapons such as aeroplanes, tanks, and heavy artillery.<sup>1</sup> Switzerland is neither large enough nor rich enough to engage in warfare as a principal, but any invading force, in addition to the bad faith involved, would have to meet the embittered opposition of the whole manhood of a country, — natural soldiers, as their history shows, and intensively trained to arms and marksmanship. Moreover, the aggressor would enter the country in the face of the certainty that the Swiss would instantly ally themselves with any enemies he might already have, and throw open all their roads and mountain passes to the armies of its new allies. Whatever may be the force of these considerations, Switzerland remains today a haven of peace, although it is completely surrounded by the territories of belligerents in the bloodiest war of the world's history.

<sup>1</sup> Cf. H. G. Wells, "Italy, France, and Britain at War."

## GOVERNMENT OF SWITZERLAND

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## CHAPTER XII

### INTERNATIONAL RELATIONS

**B**Y the constitution of 1848 the conduct of foreign affairs was assigned in general to the federation to be exercised actively by the Federal Council.<sup>1</sup> The latter was directed "to watch over the external interests of the federation, particularly the maintenance of its international relations."<sup>2</sup> In the field of foreign affairs as elsewhere, however, the activities of the Federal Council are subject to review by the federal legislature, alliances and treaties with foreign powers being expressly placed within the competence of the two houses.<sup>3</sup> In practice this means that the Federal Council conducts international negotiations, reporting the treaties into which it wishes to enter to the legislative bodies, and being authorized by the latter to ratify them.

Constitutional provisions

One exception must be noted to the powers of the federal government in the field of foreign affairs. Under earlier régimes the separate cantons were accustomed to deal quite freely with neighboring states. By a rather curious survival they still preserve "the right of concluding treaties with foreign powers, respecting

Treaty rights of cantons

<sup>1</sup> Art. 8.    <sup>2</sup> Art. 102, clauses 8 and 9.    <sup>3</sup> Art. 85, clause 5.

## GOVERNMENT OF SWITZERLAND

the administration of public property, and border and police intercourse; but such treaties shall contain nothing contrary to the federation or to the rights of other cantons."<sup>1</sup> Official intercourse between cantons and foreign governments, or their representatives, shall take place through the Federal Council; nevertheless, the cantons may correspond directly with the inferior officials and officers of a foreign state in regard to the subjects enumerated in the preceding article.<sup>2</sup> Such treaties must be approved by the Federal Council,<sup>3</sup> and may be brought before the Federal Assembly in case the Federal Council or another canton protests.<sup>4</sup> While extremely complicated, these provisions in favor of the cantons impose no real restrictions upon the scope of federal powers in international intercourse. They do lead, however, to a rather close intercourse between federal and cantonal authorities with regard to the topics affected by treaties of this description.<sup>5</sup>

Switzerland's diminutive size and neutral attitude release her from the necessity of playing an active part in the European whirlpool of alliance and intrigue. On the other hand, her rapidly growing foreign commerce demands a constantly expanding diplomatic and consular representation abroad. Moreover, it is esti-

<sup>1</sup> Art. 9.

<sup>2</sup> Art. 10.

<sup>3</sup> Art. 102, clause 7.

<sup>4</sup> Art. 85, clause 5.

<sup>5</sup> Cf. Burckhardt's "Kommentar," 2d ed., pp. 112-131.

## INTERNATIONAL RELATIONS

mated that between 300,000 and 400,000 Swiss, a number fully equal to one tenth the home population, reside in foreign countries. Of these, by the way, 125,000 were, according to the census of 1910, established in the United States. Yet it has been found very difficult to provide for the expansion of the diplomatic and consular service of the country in accordance with its obvious needs. Diplomacy is not altogether popular in Switzerland. The word itself is thought to smack too much of pomp and pride, of the obsequiousness and intrigue of royal courts. Plain citizens of limited income find it hard to understand that a diplomat of high professional education and long experience may more than earn the large salary he receives. Some of the Swiss ministers plenipotentiary are paid three times as much as the president of the federation, although this only proves that the president is paid too little, not that the minister is paid too much.<sup>1</sup>

Unpopu-  
larity of  
diplo-  
macy  
in  
Switzer-  
land

There have been some rather striking illustrations of this democratic jealousy of the diplomatic service. Thus an appropriation of only 10,000 francs for the salary of a secretary of legation at Washington was brought before the people by referendum petition and defeated, May 11, 1884, by an overwhelming majority.

<sup>1</sup> Dr. E. Platzhoff-Lejeune, "La Politique étrangère de la Suisse," in the *Jahrbuch der eidgenössischen Räte*, 1916, pp. 60-66.



## GOVERNMENT OF SWITZERLAND

It is only fair to state, however, that three other measures were submitted to the vote on the same day, part of which were extremely unpopular, the result being that the people simply threw out the whole mass of legislation submitted to them.

Considerably more serious was the rejection of the law of June 27, 1894, organizing the entire diplomatic and consular service. There seems to have been no doubt of the general desirability of this legislation. Prior to its enactment the foreign service had been provided for by a series of decrees and resolutions issued from time to time as the need dictated. To codify this heterogeneous mass and give it the prestige of formal law was the purpose of the act of 1894. In addition to the popular dislike or indifference to the diplomatic service, some religious antipathy not directly connected with the subject was injected into the campaign, with the result that the bill was defeated, February 3, 1895, by a majority of over 50,000. As a consequence the federal authorities have since not ventured to enact a law organizing the foreign service of the country.

Another interesting manifestation of Swiss democratic feeling toward diplomacy occurred in connection with the long-drawn-out controversy over the St. Gotthard Railway treaties. To facilitate the construction of the tunnel for that line, agreements were entered into with Germany and Italy in 1869. There was con-

## INTERNATIONAL RELATIONS

siderable fear at that date lest treaties even on such a subject might lead to alliance with stronger powers and endanger Swiss independence. When the Swiss government finally decided to nationalize railways, negotiations regarding the St. Gotthard line were again taken up with Italy and Germany, certain objections being raised by the latter power. In 1909, during the progress of these negotiations, it was learned that Germany had protested eleven years earlier against the ownership and operation of railroads by the Swiss government. As a result of the withholding of this knowledge from the people, intense feeling was engendered against secret diplomacy. An enormous public demonstration of protest, attended by representative citizens from all parts of the country, was held at Bern.<sup>1</sup> Out of this movement there came a demand by means of initiative petition for an amendment to the constitution providing for the submission of treaties to the referendum on the same terms as ordinary legislation. The new amendment is proposed as an addition to the referendum article of the constitution (Art. 89), and reads as follows: "Treaties with foreign powers which are concluded without limit of time or for a period of more than fifteen years shall also be submitted to the people for acceptance or rejection upon demand of 30,000 Swiss citi-

Pro-  
posed  
referen-  
dum on  
treaties

<sup>1</sup> Cf. Jesse Macy, "The Swiss as Teachers of Democracy," "Review of Reviews," 47: 711-714 (June, 1913).

## GOVERNMENT OF SWITZERLAND

zens qualified to vote, or of eight cantons.”<sup>1</sup> As a result of the present war a world-wide interest has been developed in the subject of the democratic control of international relations. Switzerland’s experiment in this field will, therefore, command attention everywhere. At present, however, the proposed amendment to the constitution is being held up together with three others,<sup>2</sup> in order to avoid political discussion during the war.

### The diplo- matic service

While the general conduct of Swiss foreign affairs is intrusted to the Federal Council as a whole, one of the members of the latter — the head of the political department — is assigned to take direct charge of the diplomatic and consular services. As the former service is organized at present (1917), it includes nine ministers plenipotentiary, located at Berlin, Buenos Aires, London, Paris, Petrograd, Rome, Tokio, Vienna, and Washington; one resident minister, at Madrid; and one consul general, who acts as *chargé d’affaires* at Rio de Janeiro. High professional ability and permanence of tenure regardless of political changes at home are the rule in the Swiss diplomatic service. Thus M. A. de Claparède, who recently (1917) retired from the Berlin embassy at the age of seventy-five, had served successively at Washington from 1888 to 1894, at Vienna from 1894

<sup>1</sup> “*Politisches Jahrbuch*,” 1913, p. 583.

<sup>2</sup> See Chapter VI.

## INTERNATIONAL RELATIONS

to 1904, and at Berlin from 1904 on. M. Charles Lardy, who retired a few months later, had been minister to France for thirty-four years. It is interesting to note, however, that two vacancies in the Swiss foreign service occurring since the outbreak of the war have been filled by men trained not so much in diplomatic lines as in business and transportation, — questions of the latter character being prominently to the fore between Switzerland and the countries to which they were accredited.

Switzerland has also established 112 consulates in foreign countries, eleven of which are managed in connection with legations. To a constantly increasing degree the consuls are professionally trained, but a number of the smaller offices are directed by men engaged in business or other occupations who give only so much of their time as may be needed to official duties. In proportion to its size and the volume of business transacted, probably no other foreign establishment in the world is so economical as that of Switzerland. The entire allowance in the budget of 1913 for the political department — which, it will be remembered, includes much besides the diplomatic and consular services — was only 1,603,400 francs.

The  
con-  
sular  
service

By the constitution of Switzerland itself a policy of neutrality is imposed upon the government. The Federal Council is specifically enjoined to "watch over the external safety of

The  
policy  
of  
neutrality

## GOVERNMENT OF SWITZERLAND

(Switzerland, over the maintenance of its independence and of its neutrality." <sup>1</sup> In the main such has been the policy of Switzerland since the sixteenth century. The darkest pages of Swiss history abundantly prove the folly of entangling alliances for a country of its size and location. After the manifold tribulations suffered during the Napoleonic period, engagements were entered into by Austria, France, Great Britain, Prussia, and Russia at the Congress of Vienna regarding the perpetual neutrality of Switzerland, and these engagements were specifically guaranteed by the Act signed at Paris, November 20, 1815, by the same powers. Nothing in the latter Act, however, prevents the Swiss from taking measures of their own to safeguard their country, and this they have wisely done by the creation of a strong defensive military force.

There can be no doubt that the policy of neutrality corresponds to the deepest needs and convictions of the overwhelming majority of thoughtful Swiss citizens. In view of the enormously greater size and power of their immediate neighbors, any thought of conquest and expansion on their part is out of the question. Compounded as they are of three racial stocks, the Swiss naturally possess many bonds of sympathy with the nations surrounding them. Moreover, their leaders feel that the republic has a world mission to fulfill, — a mission of

<sup>1</sup> Art. 102, clause 9.

## INTERNATIONAL RELATIONS

democracy, peace, and progress, — and further, they feel that the success of this mission depends upon the maintenance of neutrality and friendly relations with all other nations. They seem to be more deeply conscious than our own statesmen that in the federal principle may be found the basis of world organization in the future.

Neutrality and independence are inseparably linked in the minds of the Swiss as well as in the language of their constitution. Thus self-preservation — the first law of nature, political as well as individual — speaks in favor of neutrality. Finally it should be noted that geographic conditions give neighboring countries an interest in this policy second only to that of the Swiss themselves. For if any one of the four neighboring great powers should come into control of the passes of the Alps, it would thereby be able to menace the other three to an intolerable degree. The Swiss may therefore be said to hold their country not only because of their love for it and for independence and liberty, but also as faithful trustees for their neighbors and the peace of Europe.

In order to realize fully the principle of neutrality, the present Swiss republic had to clear away the few surviving remnants of a hoary, medieval abuse, — the system of supplying mercenary soldiers to foreign powers. This was done by an article of the constitution of 1848, providing that “no military capitulations shall be

Abolition  
of  
mer-  
cenary  
service

## GOVERNMENT OF SWITZERLAND

made.”<sup>1</sup> Two or three such capitulations, or treaties by which various cantons agreed to furnish soldiers to other countries, were still in effect at the time. As rapidly as possible they were brought to a conclusion, the last one ending in 1859. Stringent laws now forbid the enlistment of citizens on Swiss soil for foreign service, and all the duties of a neutral state in this connection are scrupulously observed. Another ancient evil was abolished in 1848 by an article of the constitution forbidding Swiss civil and military officials to receive from foreign governments “any salary, title, gift, or decoration.”<sup>2</sup> It is closely similar to a provision in the constitution of the United States,<sup>3</sup> although our danger from this source is probably much less than that of the Swiss.

During the Franco-Prussian War of 1870-71, the Swiss protected their neutrality by sending military forces to the frontiers. When the French army of General Bourbaki was driven over into their territory they disarmed it, interning officers and men, and caring for them with whole-hearted hospitality until the end of the war.

The  
present  
war and  
Swiss  
neutrality

But the greatest menace that Swiss neutrality has ever had to face is that occasioned by the present war in Europe. Immediately upon its outbreak a declaration was issued announcing

<sup>1</sup> Art. 11 of the constitution of 1874.

<sup>2</sup> Art. 12 in the present constitution of Switzerland.

<sup>3</sup> Art. 1, Sec. 9, cl. 8.

## INTERNATIONAL RELATIONS

that the federation, "true to its centuries-old tradition, would yield in no wise from the principles of neutrality so dear to the Swiss people."<sup>1</sup> The military measures taken on this occasion have been described in the preceding chapter. No violations of Swiss territory have occurred except technical ones committed by aircraft.

Early in the war the strongly expressed sympathies of the people, dividing along racial lines, for the various belligerents threatened to compromise neutrality and even to break down the sentiment of national unity. Never has the tension been greater between "*Deutsch*" and "*Welsch*," — that is, between the German and non-German sections of the country. Exaggerations of these differences by certain newspapers led to the establishment of a political Press Control Commission of five members appointed by the Federal Council, two of them to be nominated by the Swiss Press Association.<sup>2</sup> On two occasions the Federal Council found itself compelled to address words of solemn warning directly to the people. No utterances called forth by the great war express a deeper sentiment of patriotism. "First and far beyond all else," one of these appeals says in conclusion, "we are Swiss; only in a secondary degree are we Romance and Teutonic. Higher than all the sympathy we

<sup>1</sup> *Neutralitäts-Erklärung*, August 4, 1914; A. S. XXX, 361.

<sup>2</sup> *Bundesratsbeschluss* of July 27, 1915; A. S. XXXI, 273.  
A military press control was already in existence.



## GOVERNMENT OF SWITZERLAND

may feel for those bound to us by the ties of race, stands the welfare of the one Fatherland common to us all. To it everything else must be subordinated.”<sup>1</sup>

Economic  
diffi-  
culties  
caused  
by war

Closely connected with the maintenance of neutrality were certain economic difficulties which threatened not only the industries but the very life of the people. Switzerland depends upon other countries for four fifths of its grain, and for virtually all the coal and iron needed by its railroads, manufactures, hotels, and homes. After the outbreak of war it was forced to procure grain through the territories of the Entente, chiefly from America. On the other hand the only possible source of supply of coal and iron was Germany. “Each of the two hostile alliances enjoys a practical monopoly of the first necessities of life. By exploiting this monopoly to the utmost each group might ruin Switzerland, or force her to throw in her lot with the enemy.”<sup>2</sup>

The Swiss government has tried to meet this situation by negotiating a series of economic agreements with each of the belligerent groups. There have been shortages especially of coal and iron, under which industries and consump-

<sup>1</sup> *Aufruf an das Schweizervolk*, October 1, 1914; A. S. XXX, 510. The earlier appeal, issued August 5, 1914, may be found in the same volume, p. 362.

<sup>2</sup> Professor W. E. Rappard in the *New York Times*, August 26, 1917.

## INTERNATIONAL RELATIONS

tion have suffered severely, but so far famine conditions have been avoided. As these economic agreements have been entered upon with the full knowledge of both groups of warring powers, there is a strong presumption that they are scrupulously neutral both as to content and execution.

It will be recalled that at the outbreak of the war the Federal Assembly conferred plenary powers upon the Swiss executive. To safeguard this power against abuse in the field of foreign relations, each of the two houses promptly established a neutrality committee (*Neutralitätskommission*). These two committees have become exceedingly active bodies, which observe with the utmost care the transactions of the Federal Council and all other matters falling within the scope of their powers, and report thereon in great detail to their respective branches of the legislature. The large amount of time given to these reports both in the National Council and the Council of States, and the extended debates which they occasion, indicate the extreme importance which the two houses attach to the maintenance of a scrupulously neutral attitude.

With so many vital interests involved and with such wide areas of friction, it was inevitable that certain untoward incidents should occur, contrary to the settled policy of the Swiss government and people. One illustration is afforded

Neu-  
trality  
com-  
mittees

## GOVERNMENT OF SWITZERLAND

by the circumstances which led to the transfer to The Hague of Dr. Paul Ritter, former envoy extraordinary and minister plenipotentiary of Switzerland to the United States. In this capacity Dr. Ritter's earlier services had been cordially appreciated, but after our entry into the great war he appeared somewhat too eager to serve — apparently on his own responsibility — certain interests which Germany had intrusted to his charge. As a result there was considerable criticism both in the United States and in Switzerland, and it was probably for this reason in large part that he was transferred to the Dutch capital. Another and much more serious case was that of two Swiss army officers accused of betraying military secrets to the Central Powers, who nevertheless escaped with disciplinary penalties so light as to arouse severe criticism. Further, a civil official charged with the granting of export licenses was convicted of accepting bribes. This crime is so rare in Swiss political life that it always attracts sensational interest, which was greatly intensified in the case under consideration by the strained international situation. In French and Italian speaking sections of the country street demonstrations protesting against these and other apparently unneutral occurrences led to minor acts of violence against the consulates of the Central Powers.

All these cases, however, sink into insignificance in comparison with the unfortunate Grimm-

## INTERNATIONAL RELATIONS

Hoffmann affair of June, 1917. Grimm, a member of the National Council and of the extreme wing of the Socialist party, had gone to Petrograd shortly after the outbreak of the Russian revolution. Throwing himself into the whirlpool of plots and counterplots, he was able to persuade the Swiss minister to transmit a telegram to Herr Arthur Hoffmann, head of the political (foreign affairs) department of the Federal Council, inquiring as to the German attitude toward Russia. After an interval of a week Hoffmann replied stating what purported to be the German peace terms and assuring Grimm that Germany would undertake no offensive so long as a satisfactory agreement with Russia seemed possible. Both telegrams were intercepted and made public by Russian officials, and Grimm was expelled from the country.

The  
Grimm-  
Hoff-  
mann  
affair

Publication of these facts caused an enormous sensation in Switzerland. In spite of all that was said in defense of Federal Councilor Hoffmann, it was evident that his conduct could be interpreted, — indeed, was certain to be interpreted, — in the chancellories of the Entente, as undertaken in the interests of a separate peace between Germany and Russia, and hence as threatening the interests of the Entente in the most dangerous manner. From a Swiss point of view it was “a blow against international confidence in the unconditional honorable neu-

## GOVERNMENT OF SWITZERLAND

trality of our leading men and hence in the conduct of the country itself.”<sup>1</sup>

Resig-  
nation  
of  
Hoff-  
mann

Before any remonstrances were received from the countries unfavorably affected by his conduct, Federal Councilor Hoffmann tendered his resignation in a statement which made it clear that he had acted in the matter wholly on his own responsibility and without the knowledge of his colleagues of the Federal Council. The election of Gustav Ador of Geneva, president of the International Committee of the Red Cross, to the vacancy did much to allay the bitter feeling created in Romance Switzerland by the Grimm-Hoffmann affair. Another consequence was the determination to return to the old system whereby the Federal President takes charge of the political department.<sup>2</sup> It was believed that Federal Councilor Hoffmann's long-continued tenure of this position predisposed him to disregard his colleagues in the Grimm case. With a new head in charge of foreign affairs each year, similar errors are not so likely to occur.

Notwithstanding the malodorous character of the Grimm-Hoffmann affair, it served one good purpose by emphasizing anew the necessity of absolute neutrality on the part of citizens as well as officials. Fortunately for Switzerland, the wise counsels of the Federal Council and

<sup>1</sup> *Der Bund* of Bern, June 19, 1917.

<sup>2</sup> *Bundesbeschluss* of June 26, 1917.

## INTERNATIONAL RELATIONS

the sober common sense of the people of all racial stocks have begun to prevail to this end. In spite of all difficulties, economic and political, imposed upon the country by the increased ruthlessness of certain belligerents, the spirit of unity and neutrality has grown stronger. Partisanship has given way to a most noble work of humanity in behalf of all victims of the war regardless of nationality. Switzerland has become a great clearing house for the exchange of communication and material relief between prisoners and persons living in conquered areas in all the belligerent countries and their families. Prisoners interned in Switzerland are received and succored with a generosity that should earn undying gratitude for the little republic.

War  
relief  
work

In spite of her modest rôle in international politics, Switzerland has been a recognized leader in many earlier works of mercy and in other organizations of world-wide influence. At the Geneva Convention in 1864, the Red Cross was founded, and the administrative offices of the international committee of the society have been located ever since in that city. As a gracious tribute to the Swiss, it chose as its emblem their national flag with colors reversed. In 1871, the first great court of arbitration of the nineteenth century met, also at Geneva. The Telegraphic Union founded in 1869, the Universal Postal Union founded in 1874, the International Union of Freight Transportation founded in 1893,

Inter-  
national  
unions

## GOVERNMENT OF SWITZERLAND

and the International Bureau of Industrial Property founded in 1883, with the last of which has been affiliated since 1892 the International Union for the Protection of Literary and Artistic Property, all have established central offices at Bern under the supervision of the Swiss government. Finally, Switzerland led in the formation of the International Labor Office, with headquarters at Basel, — a semi-private association supported by subscriptions from the participating governments. Its purpose is to provide a basis for progressive legislation by investigation of labor conditions on the broadest and most accurate scale.

Has the  
day of  
small  
nations  
passed?

It is the view of some statesmen of certain major countries that the day of small nations has passed, that, indeed, they might with advantage to the course of the world's development be incorporated, by force if necessary, in larger political entities. Switzerland's services to civilization should alone suffice to refute this doctrine. Her domestic experiments in democratic and progressive legislation have won the sympathetic interest of the liberals of the world and led to many imitations in other countries. In foreign relations neither the renunciation of imperial ambition nor relatively small size has prevented her from becoming a most useful and influential member of the family of nations. The plucky determination of the Swiss to defend themselves to the utmost, if need be, enhances

## INTERNATIONAL RELATIONS

the respect in which they are held. Any aggressor upon this sturdy little nation will merit and receive the bitter condemnation of liberty-loving peoples everywhere.

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## CHAPTER XIII

### SWISS PARTIES AND PARTY ORGANIZATION

The  
two  
original  
parties

**T**HE foundation of the present Swiss republic was the work of those Liberals who transformed cantonal government in the thirties and forties of the last century, and who decisively crushed the forces of reaction in the Sonderbund war of 1847. Beaten on the field of battle, the minority organized itself as the Clerical (Catholic Conservative) party and continued the struggle in the national halls of legislation. As a majority party the Liberals naturally became the ardent supporters of the government which they had created. In addition to their religious differences the two parties were divided sharply on the question of states' rights, which, by the way, has been quite as fundamental and persistent in Swiss as in American politics. Completely reversing our own use of the word, the Catholic Conservatives called themselves "Federalists," in the sense that they insisted jealously upon the guarantee of cantonal rights under the federal principle. On the other hand the dominant Liberals as "Centralists" favored the extension of the powers of the federal government.

## PARTIES AND PARTY ORGANIZATION

Soon after the adoption of the constitution of 1848, it became apparent that the majority party was itself divided into a moderate and a radical wing. On matters of foreign policy and on important domestic questions such as that of railroads,<sup>1</sup> these two groups took up antagonistic attitudes, while still maintaining their solidarity against the reactionary Catholics. With power and success the moderate Liberal wing lost much of the fire and energy of its early reforming spirit; more and more it became the party of the railroad and cotton-manufacturing barons, of bankers and men of wealth generally. Long after changing conditions made their modification necessary, it held true to the orthodox economic dogmas of free competition and opposition to state interference. As in England, Belgium, and certain other European countries, the old Liberalism of Switzerland was very largely political in its program. When social problems requiring regulation by the state began to thrust themselves forward, its importance declined.

Dissatisfaction with this standpat attitude culminated in the sixties with the development of an independent democratic party, the natural outgrowth of the earlier radical wing of the Liberal party. The new independent democratic party advocated the adoption by the federation of the initiative and referendum, already successfully used in many cantons. Standing for

<sup>1</sup> Cf. Lowell, II, 302.

Subse-  
quent  
divisions

## GOVERNMENT OF SWITZERLAND

purely representative institutions in opposition to this movement, the old Liberal element was decisively defeated. Subsequently the initiative and referendum have proved so successful in practice that they have been accepted by all Swiss parties, including those conservative Liberals who opposed them in the sixties.

The constitutional revision of 1874 was largely the work of the victorious Radicals, who have ever since remained the strongest national party. As the latter increased in strength, the Liberals of the center gradually declined. From the beginning, however, the Catholic Conservative party of the right has held its own with remarkable success. Constantly fighting a defensive battle, it has developed the most efficient and harmonious party organization in Switzerland. On the other hand, as the largest party the Radical group contains some very heterogeneous elements, ranging all the way from wealthy and conservative former Liberals to working-class adherents of somewhat advanced principles. Just as Liberalism had given birth to Radicalism, so Radicalism in its turn gave birth to Socialism. In 1890 the latter party captured six seats in the National Council, and at subsequent elections it has made steady progress. Apart from this the most interesting recent development of Swiss party politics is the great decline of the former center or Liberal party, most of the members of which have gone over

Emer-  
gence  
of  
Socialism

## PARTIES AND PARTY ORGANIZATION

to the Radicals. At present, therefore, the triangular conflict of the seventies has virtually been resumed, with the Radicals in control of the federal government, attacked by the Catholic Conservatives from the right and by the Socialists from the left. In Switzerland as a whole about fifty per cent of the voters participating in elections for the National Council now cast their ballots for Radical, thirty per cent for Conservative, and twenty per cent for Socialist candidates. The following separate statements may serve to make somewhat more clear the composition and principles of the three major parties and of the more important minor political groups.

### I. *The Conservative Party Groups*

The Catholic Conservative party counts among its members almost the whole population of three cantons, — Uri, Unterwalden, and Appenzell Interior. In Luzern, Schwyz, Zug, Freiburg, Solothurn, the two Basels, St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Valais, and Geneva, it contests the field with one or more other parties. While internally harmonious to a high degree, there are certain differences between the ends sought by the laity and clergy in the Catholic Conservative party. A Christian Socialist party organization has been formed by workingmen of this creed in the

Centers  
of  
Conserv-  
ative  
strength

## GOVERNMENT OF SWITZERLAND

industrial cantons of Solothurn and St. Gallen and the cities of Zürich, Basel, Schaffhausen, Einsiedeln, etc. While sharing the clerical and states' rights views of the Catholic Conservatives, the Christian Socialists demand progressive labor legislation and occasionally coöperate with the Socialists to obtain it.<sup>1</sup> Among the more prominent leaders of the Catholic Conservative party are Giuseppe Motta of Ticino, head of the finance department of the Bundesrat; Dr. Alfons von Streng, National Councilor from Thurgau; Dr. Anton Bueler, National Councilor from Schwyz; and the two members of the Council of States from Freiburg, Georges Python and Georges J.-J. de Montenach.

What remains of the former dominant Liberal group is sometimes spoken of as the Protestant Conservative party. It also retains the name of the center, or Liberal Democratic group. Although many of its former adherents have gone over to the Radicals, it still holds nine seats in the National Council. Owing to the wealth and prominence of many of the leaders of the party, it is credited with an influence larger than its membership would indicate. In 1911 it had a voting strength of about 20,000, chiefly in Vaud, Geneva, Urban Basel, Ticino, and Neuchâtel. The recently elected member of the Federal Council, M. Gustav Ador of Geneva, is a Lib-

<sup>1</sup> Cf. V. M. Crawford, "Switzerland Today," Chs. I, II, and V.

## PARTIES AND PARTY ORGANIZATION

eral. National Councilors Eduard Secretan of Vaud and Paul Speiser of Basel are prominent among the leaders of this party.

### II. *The Radical Party*

Officially the Radical group is now named the Independent Democratic (*Freisinnige-demokratische*) party. As the largest in membership it represents a rather wide divergence of views, ranging from advanced Liberalism to advanced Radicalism. The Independent Democratic party wields great social and economic as well as political influence. In its ranks are counted most of the leaders in large industry, commerce, and finance. It also commands the support of the greater part of the peasants of the country. The bulk of the party's strength is in the large Protestant cantons, and it is, of course, frankly anti-clerical in its attitude. From their Liberal predecessors the Radicals inherited and have retained to the present time a strong centralizing tendency. Originally they also inherited the old Liberal antagonism toward state interference. Hence they were formerly opposed to protective tariffs and to the nationalization of railways. With the manufacturing development of the country, however, the Radicals have turned to protection. And as large-scale industries became numerous, they have admitted more and more the principle of state control and also of state

Member-  
ship  
and  
policies

## GOVERNMENT OF SWITZERLAND

ownership and operation. Most of the great federal monopolies were created and the railroads of the country were nationalized under the dominance of the Radicals.

At the present time (1917), five of the seven members of the Bundesrat are Radicals; viz., Messrs. Decoppet, Schulthess, Müller, Forrer, and Calonder. Among the more prominent leaders of the party are Dr. Paul Usteri of Zürich, Councilor of State; and the following members of the National Council: Karl Scheurer and Johann Hirter of Bern; Ernest Chuard and Dr. Paul Maillefer of Lausanne; Henri Fazy of Geneva; Heinrich Häberlin of Thurgau; Dr. Robert Forrer of St. Gallen; Arthur Eugster of Appenzell Exterior; and Dr. Carl Spahn of Schaffhausen.

There still remains a small group in Swiss politics directly descended from those democrats who in the sixties did such valiant work for the initiative, referendum, and other reforms. In the course of time most of them were swallowed up by the Radical party, but the Eastern Swiss Democrats, with about 18,000 votes, chiefly in St. Gallen, Thurgau, Appenzell Exterior, and Glarus, have always maintained their independence of the dominant party. In the Federal Assembly their representatives have joined with the Socialists in the formation of a social political group, so-called, for coöperative effort to advance progressive legislation.

## PARTIES AND PARTY ORGANIZATION

### III. *The Social Democratic Party*

"The Social Democratic party," according to one of its Swiss leaders, "is the political organization of wage workers, employees, and the economically weak generally, with which the socially minded of all classes have united themselves."<sup>1</sup>

This description somewhat idealizes the situation, for while the great majority of Socialist party members belong to the working classes, there are large bodies of laborers and of the "socially minded" as well, in other parties. The principal centers of Socialist strength in Switzerland are the great industrial cities, — Zürich, Winterthur, Basel, Bern, Biel, and Olten. At the election for the National Council in 1908, 70,000 votes were cast for the candidates of this party. Although this amounted to sixteen per cent of the total popular vote, the Socialists secured only four per cent of the seats in the lower house. Under the circumstances it is quite natural that they should strongly favor proportional representation.

Strength  
of  
Socialists

The principal tenets of the Swiss Social Democrats are the same as those of their comrades in other countries. Foreign influence, especially that of the German Marxians, has been very powerful in their party. A surprisingly large number of its leaders are of foreign birth or of

Foreign  
influence  
on party

<sup>1</sup> P. Pflüger, "Handspiegel für Nationalrats-Wähler," p. 11.



## GOVERNMENT OF SWITZERLAND

foreign parentage and education. As a movement Socialism "seeks to control all the powers of the state and to bring about the collective ownership and control of the principal means of production and exchange, in order that poverty, class antagonisms, vice, and other ill results of the existing social system may be abolished, and that a new and better social system may be attained." As a social forecast it holds "that the next epoch in the evolution of society will be distinguished by the social ownership and control of the principal agencies of production and exchange, and by an equalization of opportunity as a result of this socialization."<sup>1</sup> Already, however, Switzerland has attained a higher degree of democratic control than any other country, and, as we have seen, it has also made great strides toward collective ownership of its great industries. It is doubtless because of these facts and the wide diffusion of small property holdings that Socialism has remained relatively so weak in Switzerland as compared with Germany and France.

While coöperating more or less grudgingly in the nationalization of railways and other plans for state ownership sponsored by the Radical party, the Socialists have always criticized that party severely. Such steps as it took toward nationalization of industry, according to these critics, came too late, were not comprehensive

<sup>1</sup> Spargo and Arner, "Elements of Socialism," p. 5.

## PARTIES AND PARTY ORGANIZATION

enough, and were designed primarily to raise revenue and only secondarily to improve the condition of the workers. To the Socialist the Radical party is a dominant party in appearance only; behind it stands the real ruler of the country, — a sinister capitalistic hierarchy.

Like all its predecessors, as the Swiss Social Democratic party acquired a following it developed internal differences. Its members exhibit every shade of opinion from an advanced but pacific radicalism to violent revolutionary propaganda. In 1901, the party formed an alliance with the *Grütliverein*, an association of workmen of advanced views which with its numerous branches and thousands of members had exerted a strong influence in favor of labor reforms. To the younger and more extreme element of the Socialist party, however, the moderate "*Grüthianer*" were anathema, and late in 1916 the partnership was dissolved. It remains to be seen how far this action will affect Socialist strength in future elections.

Since the outbreak of the war the Swiss Socialists have been largely preoccupied by the question of militarism. Formerly their attitude was favorable to, or at least tolerant of, defensive armament. During the last few years, however, the younger and more extreme wing of the party has been carrying on a campaign against military preparation of any sort. "Not a man and not a penny" is the slogan of this element, and at

Internal  
differences

Extreme  
anti-  
militarists

## GOVERNMENT OF SWITZERLAND

the party diet of June 9, 1917, they succeeded in carrying their views by a vote of nearly three to one. Henceforth Socialist members of the Federal Assembly are to be instructed to vote against all military resolutions, credits, and laws, and the party is to undertake the organization of Swiss workingmen for the most extreme and resolute resistance against the participation of the country in any war. By another resolution on the same occasion the Swiss Socialists declared for class war until existing governments are brought down and the present European war ended by revolution.<sup>1</sup> It is hardly necessary to say that these sentiments are repulsive to the great mass of patriotic Swiss citizens, particularly so at a time like the present when a large part of the young manhood of the country stands in arms at the frontiers to protect the country against invasion. Internationalistic doctrines of this character are inconsistent with the declarations of nearly all the older leaders of the party and with the opinions of many of its members. Thus the war, which already has split the Social Democratic party in a number of countries, is likely to have the same effect in Switzerland.

Dr. Emil Klöti of Zürich, a well-known writer on proportional representation, is president of the Socialist party in Switzerland. Among its older and more conservative leaders are Councilor

<sup>1</sup> *Berner Bund*, June 11, 1917.

## PARTIES AND PARTY ORGANIZATION

of State Heinrich Scherrer of St. Gallen; and the following National Councilors: Hermann Greulich, Paul Pflüger, and Robert Seidel of Zürich; Eugen Wullschleger of Basel; and Gustav Müller of Bern. The following are leaders of the extreme anti-militaristic and revolutionary wing of the party: Messrs. Nobs, Platten, and Münzenberg; and National Councilors Robert Grimm of Bern, Charles-Th. Naine of Lausanne, and Ernest Graber of Neuchâtel.

Besides the regular party organizations, Switzerland possesses a large number of propagandist associations, local and national, some of which have done very effective political work. The *Grütliverein* has been mentioned already. *Helvetia*, founded in 1858, pushed the construction of the Gotthard tunnel, completed in 1882, and the *Neue Gotthardvereinigung* of later date looks after the interests of the public in relation to railroad service in that part of the country. Emulating the Gotthard success, the *Pro Sempione* society waged a campaign for the Simplon tunnel, which was completed in 1906. The *Eidgenössische Verein* is an influential conservative club. Three great campaigns for proportional representation in national elections have been waged by the *Schweizerischer Wahlreformverein für proportionale Volksvertretung*. The *Föderativverband des eidgenössischen Personals* is constantly growing in strength, and during recent years has exerted marked influence upon the federal legis-

Propa-  
gandist  
asso-  
ciations

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lature in matters affecting the wages and conditions of labor of government employees.

**Woman  
suffrage**

The woman suffragists of Switzerland are organized in the *Schweizerischer Frauenstimmrechtsverein*. There are also many local suffrage and feminist associations. A number of the latter are petitioning for the right of married women to administer their own property. They also ask that husbands shall be compelled to give full accounts of their means and personal expenditures. At the annual meeting of the national suffrage association in 1917, a resolution was adopted favoring the use of the initiative to secure an amendment to the federal constitution conferring the vote upon women. It is not probable, however, that this end will be attained in the near future. In view of the progress made by the Swiss in so many fields of democratic endeavor, they must be adjudged backward to a rather startling degree in the movement for woman suffrage. To a large extent this is due to the fact that the German-speaking sections of the country share the general Teutonic antipathy against any agitation for woman's rights. There is also some opposition due to clerical prejudice. On the other hand, the Swiss have dealt generously with women both in the matter of admitting them to higher educational institutions and in freely opening up to them numerous trades and professions, — opportunities of which, by the way, they have availed

## PARTIES AND PARTY ORGANIZATION

themselves eagerly.<sup>1</sup> While this policy deprives the suffragists of a grievance, it also enables them to maintain that their educational training and economic contribution justify the extension of the franchise to them.

So far Swiss women have won only a few local victories for suffrage, none of which is of great political significance. In 1908, Vaud conferred upon them the right to vote in the church communes — that is, to help choose parish councilors and pastors. However, women were not made eligible to these offices. Urban Basel followed the example of Vaud in 1917. Recently Neuchâtel conferred upon women the right to vote for and be elected to *Conseils de prud'hommes*, i.e., councils which adjudicate in disputes between employers and employees. The first election under this law occurred in October, 1917. Women participated in large numbers, electing 46 out of 438 councilors.<sup>2</sup> There has been considerable agitation lately for municipal suffrage in Bern and Geneva.

In addition to the influence wielded by the clubs and associations referred to above, party motives are frequently crisscrossed by racial and linguistic tendencies. Voters in French and

<sup>1</sup> On this point see an interesting but rather too optimistic article on "Women and Democracy in Switzerland," in the "Atlantic Monthly," 110: 423-426 (September, 1912).

<sup>2</sup> "International Woman Suffrage News," 12: 42 (December, 1917).

## GOVERNMENT OF SWITZERLAND

Italian speaking cantons are exceedingly jealous of their separate interests. Even those whose affiliations are with centralizing parties do not hesitate to abandon that attitude at the least threat of anything hostile to their local interests.

News-  
papers  
and  
politics

Newspapers also play a great part in Swiss politics. Although functioning usually as the organs of one or another of the political parties, they are singularly free from partisan rancor or personal vituperation. The news accounts of meetings of national and cantonal legislatures, city councils, party diets, and other political assemblages are complete and unbiased to a degree almost unknown in the United States. Solid argument and dry facts are used unsparingly, and there is none of the effort so common on this side of the Atlantic to play up a single sensational incident in such a way as to overshadow events of real significance.<sup>1</sup>

<sup>1</sup> Among Swiss daily newspapers the *Bund* of Bern is perhaps the most useful for students of politics. It is the nearest approach to an "official" paper that exists in Switzerland, and as such supports the Radical party. Of the same partisan attitude is the *Neue Zürcher Zeitung*, which is valuable not only for its political news and views, the latter somewhat pro-German, but also because of the attention it devotes to commercial, financial, industrial, and agricultural interests, especially those of eastern Switzerland. Other important dailies are the *Vaterland*, the leading organ of the Catholic Conservative party, Luzern; the *Basler Nachrichten*, Liberal Conservative; the *National Zeitung*, Radical, Basle; *La Liberté*, Catholic, Freiburg; *La Revue*, Radical, Lausanne; *La Gazette de Lausanne*, Liberal Conservative;

## PARTIES AND PARTY ORGANIZATION

The present strength (1917) of the principal parties in the two houses of the federal legislature is as follows: <sup>1</sup>

Name of Party	Council of States	National Council	Present strength of parties in federal legislature
Catholic Conservative.....	16	39	
Liberal Democratic (Conservative) .....	1	13	
Independent Democratic (Radical) .....	21	108	
Social Democratic.....	1	18	
Minor parties and independents .....	5	11	
Total.....	44	189	

It will be observed that the number of the Catholic Conservatives is much greater pro- and *Le Journal de Genève*, Liberal Conservative. There is no really prominent Socialist paper. The *Tagwacht*, Bern, and the *Basler Vorwärts* are perhaps the most noteworthy of the party's organs. Occasional articles of political interest may be found in the following Swiss reviews of a more general character: *Wissen und Leben*, semi-monthly, Zürich; *La Semaine littéraire*, Geneva; and *La Bibliothèque Universelle*, monthly, Lausanne. An excellent brief discussion of Swiss journalism may be found in A. T. Story's "Swiss Life in Town and Country," Ch. XVII. The authoritative reference in this field is the "Annuaire de la Presse Suisse et du Monde politique," published in Geneva.

<sup>1</sup> According to a recent newspaper report, the new National Council, elected in December, 1917, for the ensuing three years, is constituted as follows: Catholic Conservatives, 42; Liberal Democratic, 11; Independent Democratic, 100; Social Political Group, 5; Social Democratic, 19; minor parties and independents, 7; with five seats as yet undecided.



## GOVERNMENT OF SWITZERLAND

portionally in the upper than in the lower house. This is due to the fact that the strength of the Clericals is in the small cantons, each of which nevertheless sends two members to the Council of States. As the Radicals are strongest in the larger cantons, which also elect but two members each to the Council of States, the latter party does not come out so well in the upper house as in the lower. In both houses members are seated not according to party but according to the districts which they represent, — another evidence of the moderation of party feeling in Switzerland.

Coming as he does from an exceedingly noisy and strenuous political environment, the American student is predisposed to find the quieter methods of Swiss parties ineffective, and the parties themselves of small importance. It is true that Swiss political groups are exceedingly stable, as figures showing their strength from year to year in the National Council amply demonstrate.<sup>1</sup>

<sup>1</sup> The strength of the four principal parties in the National Council at various dates is given as follows:

Party Name	Year		
	1878	1890	1902
Catholic Conservative.....	35	35	35
Liberal Democratic (Conservative)....	31	22	25
Independent Democratic (Radical)....	69	83	97
Social Democratic.....		6	9

## PARTIES AND PARTY ORGANIZATION

There is no large mass of independent voters to turn the country sensationally and without warning from one side to the other. Counting Radicals of today as an outgrowth from the Liberals of a generation ago, it may be said that the republic has been under the control of a single party from its foundation in 1848. And it is generally agreed that party feeling is less marked, party action more restrained, since 1874, than in the earlier period of the federation.

For this comparative quietness and absence of passion a number of reasons may be given. First, there is virtually no patronage to be secured by partisan activity. Professional politicians are almost unknown in Switzerland. Second, the referendum enables the people to overthrow the work of a legislator without dismissing him from his seat. Third, the members of the national executive are not chosen by popular vote. Among minor reasons may be mentioned the brevity of legislative sessions and the comparatively small size of electoral districts, which makes it possible for voters to know candidates personally.

While these causes explain the apparent placidity of Swiss political life, it by no means follows that the parties of that country are weak in organization or ineffective in action. There is something of the federal idea in the structure of the greater national parties. Each of the latter rests upon a number of cantonal party groups which have large autonomous powers in

Apparent  
placidity  
of Swiss  
politics

Organ-  
ization  
of  
parties

## GOVERNMENT OF SWITZERLAND

their own districts. Often the name of a local party differs from that of the national group with which it is affiliated, — a situation which emphasizes sharply the distinction drawn between state and national politics. On national issues, however, these local bodies obligate themselves not to take action without consulting the central party officials. Provision is also made in the statutes of the various national parties for individual membership on the part of adherents living in sections of the country where the party enrollment is not large enough to warrant organization. The supreme authority of a party is vested in a diet which will be described later. Each party possesses a central committee chosen annually, either by the cantonal organizations or by the diet, to conduct the affairs of the party. In the Radical party this committee is made up of thirty-two members, one from each canton and half canton, except Zürich, Bern, and Vaud, which are given two each. The central committee of the Liberal Democratic party includes besides the cantonal delegates all representatives of the party in the Federal Assembly and one representative from the editorial office of each party organ.<sup>1</sup> As the central committees are too unwieldy for frequent meeting, they usually select a smaller executive committee from their midst. In both the Radical and Socialist parties

<sup>1</sup> Cf. "Die Statuten der schweizerischen liberal demokratischen Partei," *Politisches Jahrbuch*, XXVII, p. 738, 1913.

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there are organizations known respectively as the Young Radicals and Young Socialists, although this appellation seems to signify not that the members are youthful in years but rather that they are advanced in their views.<sup>1</sup> Each national party chooses a president, vice presidents, secretary, treasurer, etc., who have seats in the executive committee.

It is by the party diets, however, that all this Party diets machinery is set in motion. These are held annually, or more often if emergency warrants, in one of the principal cities of the country, designated for the occasion. Between three and four hundred delegates attend the diets of the larger parties. Among the delegates of the Socialist party, which favors woman suffrage, there is always a considerable number of women. Many party members who are not delegates come from neighboring localities and increase the attendance materially.

After the presentation of the annual reports and accounts of party officials, the diet turns to public matters. The course pursued by its members in recent sessions of the Federal Assembly is reviewed, and sometimes sharply censured. In these, as in all other proceedings of the diets of their parties, representatives in the National Council and Council of States and even members

<sup>1</sup> Sunday schools such as exist in other countries are maintained by Swiss Socialists for the training of children in party principles.

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of the Bundesrat play a prominent part, nor does there seem to be any feeling that participation by the latter constitutes undue partisanship or the unfair use of official position. Next on the regular program the diet takes up the large immediate issues of the day. Thus, at the diet of the Radical party held in Bern, June 19-20, 1917, the two great topics considered were administrative reform and the financial program of the Federal Council. It is the custom to appoint in advance two authorities on each of such questions, one to report in German, the other in French. These reports usually embody a thorough analysis of the question and conclude with definite proposals for its solution. After the authorities have spoken the matter is open for general discussion from the floor, which is often animated and prolonged. In the end a decision is reached and formulated in a resolution which is presumed to bind the party and the party's representatives in office. At diets of minority parties the circulation of initiative petitions to secure certain party ends is a frequent subject for discussion.

It will be noted that the Swiss party diet differs sharply from an American national convention in that it is concerned solely with party policy, not with nominations. And in its determination of questions of policy it acts with perfect openness, the whole body of delegates taking part in the proceedings without a trace

## PARTIES AND PARTY ORGANIZATION

of the noise and disorder which mar our national conventions. Personalities are almost completely absent from these discussions. The frequency with which the diets are held also has the advantage of securing a new and authoritative statement of national party policies at least once a year, whereas we have to wait four years from one platform to the next.

Of course these conditions might be changed if Switzerland turned to a single president elected by the people instead of a Federal Council of seven chosen by the Federal Assembly. Nominations to the Federal Council and to other important offices within the gift of the federal legislature are made not by the diets but by party caucuses composed of members of the two legislative houses. At present the only popularly elective federal officials are representatives in the National Council and in the Council of States, so far as the latter are chosen by the people. As electoral districts are small, nominations for these offices are usually made by a meeting of the party members of the district or canton concerned. In districts where a contest is hopeless, minority parties do not as a rule nominate candidates. The principal parties often agree among themselves upon the number of seats to which each is entitled in a district electing several members to the National Council, and nominations are then made by each accordingly. Sometimes a growing party becomes dissatisfied with

Nomi-  
nations

## GOVERNMENT OF SWITZERLAND

its quota and attempts to capture an additional seat or two. The result, of course, is a political campaign of unusual fierceness until a new balance of power is worked out. In all these contingencies, however, one must reckon with the Swiss voter's dislike of rotation in office, as a result of which a sitting member is not to be dismissed out of hand even though his party's waning strength would not enable him to retain his seat. At his death or resignation, however, the inevitable change is promptly consummated.

Influence  
of Swiss  
parties

Deficient as Swiss political life is in spoils-hunting, noise, and sensationalism, it is apparent that the national parties of the country are admirably organized for the work they have to do. In the diets of the parties the greater issues of national politics are first threshed out. As it exists today the federal government is largely the product of such decisions in the past. In the contemporary action of the diet of the dominant party the course of the government in the immediate future is usually forecast. In the decisions of minority parties the strategy of the opposition is outlined in advance. Every action of the diets is characterized by a high degree of intelligence and efficiency. Both in what they do and in what they leave undone Swiss parties might serve as models for parties in certain other countries.

## PARTIES AND PARTY ORGANIZATION

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## CHAPTER XIV

### THE CANTONS: ORGANIZATION

Cantons  
differ  
widely  
among  
them-  
selves

**I**N spite of the immensely greater territory of the United States, the differences existing between the various states are small compared with those existing between the cantons of Switzerland. In historic background, in economic, racial, linguistic, and religious conditions, the latter exhibit wide divergences which have been described elsewhere. The result is a peculiarly vivid local life, which to many a citizen and politician is more absorbing than the distant and less colorful life of the federal union. Even in size the cantons vary greatly, ranging all the way from Graubünden and Bern with 2773 and 2657 square miles respectively, down to Zug and Schaffhausen with 92 and 114 square miles respectively. Some of the cantons include both urban centers and wide areas of farming country; others are almost entirely agricultural and pastoral; while two of them — Geneva (108 square miles) and Urban Basel (14 square miles) — are virtually city states.

Politically also the cantons differ widely among themselves. At one end of the scale are the six democracies, — Uri, Upper Unterwalden, Lower Unterwalden, Glarus, Appenzell

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Interior, and Appenzell Exterior, in which a Landsgemeinde or popular assembly is the supreme legislative authority. Next in the degree of their democracy come eleven cantons each with some form of the obligatory referendum: Zürich, Bern, Schwyz, Zug, Solothurn, Rural Basel, Schaffhausen, Graubünden, Aargau, Thurgau, and Valais. Seven are democratic to the extent that they possess the optional referendum — namely, Luzern, Urban Basel, St. Gallen, Ticino, Vaud, Neuchâtel, and Geneva. Freiburg alone is still without the referendum in either form. It is, therefore, the sole remaining case of a purely representative or republican form of government among the cantons of Switzerland.

As regards their internal organization, on the other hand, all the cantons follow the same general plan. With the exception of the six democratic states, which will be discussed in detail later, each has a unicameral legislature usually called the Grand Council (*Grossrat*, *Grand Conseil*, *Gran Consiglio*), sometimes the Cantonal Council (*Kantonsrat*). These bodies are elected by popular vote, — in ten cantons by the method of proportional representation, — usually for terms of three or four years.<sup>1</sup> The basis of representation is very low, especially in the smaller cantons. Thus in Zug there is one member of the legislature for every 350 inhabitants; in Schaffhausen, one for every 500. Even in the

Similarity  
of  
internal  
organiza-  
tion

<sup>1</sup> In Graubünden for two, in Freiburg for five years.

## GOVERNMENT OF SWITZERLAND

larger cantons the basis of representation is much lower than the average fixed for state legislatures in the United States. In Freiburg, Ticino, and Neuchâtel, for example, it is one representative to 1200 inhabitants; in Zürich and St. Gallen, one to 1500; and in Bern, one to 3000.<sup>1</sup> As a result of these low ratios cantonal legislatures have a relatively large membership, ranging from somewhat less than 100 in smaller cantons to over 200 in the larger. The Cantonal Council of Zürich, for example, has 223 members.

The  
grand  
councils

Students of state government in the United States are more and more inclined to doubt the desirability of bicameral legislatures. While the Swiss adopted the latter system in their federal scheme, they do not seem to have considered it suited to the needs of cantonal government. Nor is hasty legislation the result of the absence of this favorite device of the check-and-balance theorists. In deliberateness and sound judgment and in the quality of their discussions, the Grand Councils take high rank, several of them comparing favorably with the two national houses themselves. To a foreign observer the lengthy and systematic reports of the proceed-

<sup>1</sup> To complete the list the following intermediate figures may be quoted: Aargau, one to 1100 inhabitants; Luzern, Geneva, and Valais, one to 1000; Solothurn and Rural Basel, one to 800; Schwyz, one to 600; Vaud, one to 350 voters, equivalent to about 1600 inhabitants; Thurgau, one to 250 voters, equivalent to about 1150 inhabitants.

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ings of cantonal legislatures in Swiss newspapers are particularly impressive as indicating the extent to which their deliberations are followed by the public. With bodies of this character the value of a second house for the purpose of avoiding hasty action is not likely to be great. Moreover, if restraining action of this sort should become necessary, the people themselves could provide it by means of the referendum.

According to the federal constitution, cantonal constitutions ~~must~~ "have been ratified by the people, and may be amended whenever the majority of the citizens request it" (Art. 6, cl. c). In addition to this absolute application of the initiative and obligatory referendum to their constitutional affairs, eleven cantons, as was noted above, have adopted the obligatory referendum applying to ordinary legislation. In most cases the latter includes all laws, which thus come automatically before the people for final decision. However, the output of a Swiss cantonal legislature does not run to anything like the bulky volume or two of statutes turned out annually by our American state legislatures. In nearly all cases it barely fills a small pamphlet of a few score pages. Moreover, the same distinction is made as in the case of federal legislation between laws and inferior forms of the expression of the legislative will, the former only as a rule coming before the people under the obligatory referendum. As the laws thus

Initiative  
and  
referen-  
dum  
in  
cantons

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represent but a small part of the restricted legislative output of a year, the people are not overburdened by being compelled to pass judgment upon a large number of bills at any one time.

Besides laws, certain financial measures are specifically subject to the obligatory referendum in several cantons. Thus all money grants in excess of 250,000 francs, or of an annual sum of 20,000 francs, must be approved by the people of Zürich. Several cantons not only have the obligatory referendum applying to laws and large appropriations but also the facultative referendum (i.e., conditioned upon the gathering of the signatures of a certain number of petitioners) applying to other resolutions and decrees of the legislature. In Bern and Aargau the budget as a whole was formerly subject to the obligatory referendum, with the result that it was thrown out so often by the economical electorate that the matter had to be withdrawn from popular control.<sup>1</sup>

Each of the ~~seven~~ cantons employing the optional referendum has fixed a definite number of signatures necessary to make a petition effective, ranging from 1000 in Urban Basel to 6000 in Vaud.<sup>2</sup> In Luzern and Ticino the requirements

<sup>1</sup> Lowell, "Governments and Parties," II, p. 270. At present the obligatory referendum in Bern applies to appropriations in excess of 500,000 francs; in Aargau, to all laws.

<sup>2</sup> For the other cantons the numbers are: Luzern and Ticino, 5000; St. Gallen, 4000; Neuchâtel, 3000; and Geneva, 2500.

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are rather stiff, working out to something like fifteen per cent of the qualified voters. The lowest requirements are those of Urban Basel, — something less than four per cent, — and of St. Gallen, — about seven per cent of the electorate. In several cantons the number of signatures required for the initiative on ordinary legislation is the same as that fixed for the facultative referendum. A larger number of signatures is required for the constitutional initiative by some cantons. Thus Bern requires 12,000 signatures for an initiative proposing an ordinary law and 15,000 for a constitutional initiative; Zug requires 800 signatures for an ordinary initiative and 1000 for a constitutional initiative. In other cases, however, — as, for example, Luzern, Schwyz, Urban Basel, Rural Basel, Aargau, and Geneva, — the same number suffices for both kinds of initiatives. All cantons now have the initiative for ordinary legislation except Freiburg, and even in that canton 6000 voters may bring the question of a constitutional revision before the electorate.

Constitutional amendments may be proposed by the cantonal legislatures as well as by initiative petition. Facilitated by these two methods, the process of change is a continuous one. All but seven of the cantons possess constitutions of later date than the federal revision of 1874.<sup>1</sup>

Constitutional amendment

<sup>1</sup> The fundamental law of Ticino dates from 1830, that of Geneva from 1847, of Neuchâtel from 1858, of Zürich and Thurgau from 1869, but all these have been amended re-

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On the whole, the initiative and referendum seem to work as well in the Swiss cantons as in the federation. It should not be forgotten that these two democratic institutions have had a much longer history in some of the former than in the latter.<sup>1</sup> Indeed, it was the popularity of the initiative and referendum in the cantons that led to their adoption by the federation. And this popularity continues; vigorous and frequent use of both these agencies of direct popular government is the rule in cantonal affairs. Thus in the fifteen years from 1893 to 1908, the initiative was invoked eleven times,

peatedly in important particulars. Here again, however, Freiburg is an exception; its constitution, dating from 1857, remains virtually unchanged. Of later date than the foregoing are the constitutions of Bern, 1893; Luzern, 1875; Uri, 1888; Schwyz, 1876 (revised, 1898); Upper Unterwalden, 1902; Lower Unterwalden, 1877; Glarus, 1887; Zug, 1894; Solothurn, 1887 (revised, 1895); Urban Basel, 1889; Rural Basel, 1892; Schaffhausen, 1876; Appenzell Exterior, 1908; Appenzell Interior, 1872; St. Gallen, 1890; Graubünden, 1892; Aargau, 1885; Vaud, 1885; and Valais, 1907.

<sup>1</sup> In the imperfect form of the "veto," the referendum was introduced by six cantons between 1831 and 1852, all of which subsequently accepted the more effective modern form of this institution. Prior to the adoption of the federal constitution of 1874, seven other cantons established the true legislative referendum in either obligatory or optional form. The initiative for ordinary laws was somewhat later of development. However, six cantons introduced it between 1845 and 1874. For lists with dates see Lowell, "Governments and Parties," II, pp. 251, 281; Stüssi, "Referendum und Initiative in den Schweizerkantonen," pp. 66-68.

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and the obligatory referendum brought eighty-one measures before the people of the canton of Zürich. Of course in the less populous cantons which have a smaller legislative output the use of these two democratic devices is not so frequent.<sup>1</sup> It is beyond question, however, that the initiative and referendum have come to stay in the cantonal as well as in the federal sphere. The prevailing tendency is to strengthen and facilitate the use of these tools of direct popular rule. Within recent years two cantons have substituted the obligatory for the optional referendum. There is a widespread conviction among the Swiss that Freiburg is reactionary, largely because of the failure of this canton to introduce the legislative initiative and referendum. Other causes contribute to strengthen this view, chiefly the extremely ultramontane character of the politics of the canton. It is, perhaps, something more than a coincidence that the only Swiss state which does not possess the ordinary initiative and referendum does possess a political machine and a political boss somewhat on the same order as the worst-governed American commonwealths.<sup>2</sup>

In each Swiss canton the executive power is intrusted to a board or commission usually

Cantonal  
execu-  
tives

<sup>1</sup> See the admirable tables in Lowell, "Public Opinion and Popular Government," pp. 311-365.

<sup>2</sup> Cf. article on "Political Boss in Switzerland" in the "Review of Reviews," 42: 226 (1910).



## GOVERNMENT OF SWITZERLAND

of five or seven members,<sup>1</sup> and variously known as the Administrative Council (*Regierungsrat*), the Small Council (*Kleinrat*), or the Council of State (*Conseil d'État*, *Consiglio di Stato*). The term of office of this council is in nearly every case the same as that of the legislative body. In all except two cantons the executive commission is now chosen by the people. Zug and Ticino employ proportional representation for this purpose. Election by the legislature was formerly universal, but at present (1917) this method remains in vogue only in Freiburg and Valais.

At the head of each administrative council stand a president (*Landamman*) and a vice president (*Statthalter*). The principal duties of the council are to execute the laws and resolutions passed by the legislature and people; to maintain order and security within the state; to supervise and report upon the entire administration of the state, further to supervise communal administration; and finally to draft bills at the request of the legislative branch. As in the case of the Federal Council, the executive council of a canton acts as a board upon all matters of importance. For convenience in handling administrative details the members are assigned to separate departments bearing such names as the Department of Charity,

<sup>1</sup> In Bern and Appenzell Interior there are nine members; in Lower Unterwalden, eleven.

## THE CANTONS: ORGANIZATION

Education, Finance, Police, Sanitation, Justice, Military Affairs, Building, the Interior, Commerce and Trade, Industry and Agriculture, and the like. The relations between an administrative council as a whole and its legislative superior, the Grand Council, are similar to those existing between the Federal Council and the Federal Assembly. Incidentally it may be noted that members of the cantonal executives attend sessions of the legislative body and are subject to interpellation at any time by any member of the latter.

The smaller cantons are directly administered as a single unit by their administrative councils. Larger cantons are divided into a number of districts (*Bezirke*, *Amtsbezirke*), of which, for example, there are eleven in the canton of Zürich, subdivided into 189 communes; and thirty in the canton of Bern, subdivided into 507 communes. In each of these districts a *Regierungsstatthalter* represents the interests of the state government, giving special attention to the supervision of communal administration, the investigation of crimes, and the maintenance of order by means of the district police force. He is assisted by a district clerk, who in several cantons keeps the records of land ownership and mortgages.

Adminis-  
trative  
districts

A curious institution known as the recall (*Abberufung*) still survives in a number of cantonal constitutions. The earlier Swiss theory of a total constitutional revision seems to have

The  
recall

## GOVERNMENT OF SWITZERLAND

been that it amounted to a complete change in the course of the ship of state, and hence that an entirely new set of officers should be called to the helm.<sup>1</sup> In twelve or thirteen cantons, therefore, complete revision was accomplished by the election of a new legislature, occasionally also of a new executive and other important office holders. As in the case of the federation, however, the greater ease of partial amendment has made total amendment and the recall of officials in connection therewith a thing of the past. In eight cantons, however, another form of recall exists which may be employed at any time that a sufficient number of petitioners request it<sup>2</sup> and a majority at the ensuing election favors it. This form of the recall is usually applicable to the legislative body as a whole, and in a few instances to the members of either house from a single electoral district. The institution is of considerable antiquity,<sup>3</sup> but in an era of vigilant public opinion, of the initiative and referendum, and of officials directly elected for short terms in small districts, it seems to have outlived its usefulness. At least there is no record of its employment during the present political generation. Nor does it seem to

<sup>1</sup> Stüssi, "Referendum und Initiative," p. 152.

<sup>2</sup> These are Bern, 12,000 signatures; Luzern, 5000; Solothurn, 4000; Rural Basel, 1500; Schaffhausen, 1000; Aargau, 5000; Thurgau, 5000; and Ticino, 11,000.

<sup>3</sup> See article by Margaret Schaffner, "Recall of Officials in Switzerland," "Yale Review," 18: 206 (1909).

## THE CANTONS; ORGANIZATION

have been known to the originators of the recall idea in the United States.<sup>1</sup>

Each canton has its own judicial system. There are numerous local differences, but the same general principles are observed everywhere. The court hierarchy is composed of (1) the justice of the peace (*Friedensrichter, Juge de Paix*) in each commune; (2) the district court (*Amtsgericht*); and (3) the superior or cantonal court (*Obergericht, Kantonsgericht*). In civil cases the amount involved determines the court of first instance, and every case may be appealed at least once. The justice of the peace is commonly called the "mediator" (*Vermittler*), for it is his duty to settle every case brought before him by arbitration if possible. If not, he deals with it judicially or else remands it to the proper court. His fees are the same in either case, so that he has no motive to promote litigation. Among a people so prone to going to law as the Swiss,<sup>2</sup> the work of the mediator is of high social value. In a large proportion of cases he succeeds in reconciling quarrelsome married couples, smoothing over village rows before heads are broken, and nipping lawsuits in the bud before court costs and lawyers' fees eat up the property of the litigants.

The  
court  
system

<sup>1</sup> Rappard, "Initiative, Referendum, and Recall in Switzerland," *Ann. Am. Acad.*, 43: 129 (1912).

<sup>2</sup> Cf. Gottfried Keller's great classic, "Romeo und Julia auf dem Dorfe," in his "Leute von Seldwyla."

## GOVERNMENT OF SWITZERLAND

The district court consists of from five to seven judges, usually elected by the people for from one to eight years, — three, four, and six year terms being most common. Seven to thirteen judges sit on the bench of the superior or cantonal court. They are usually chosen by the legislature. A division of the latter court acts as a Court of Cassation; that is, it hears cases on appeal and if it finds sufficient grounds remands them for retrial. No cantonal court possesses the power to declare an act of the legislature unconstitutional.

Courts  
of  
commerce  
and  
industrial  
courts

In industrial districts special courts of commerce (*Handelsgerichte*, *Tribunaux de Commerce*) and industrial courts (*Gewerbegerichte*) have been established.<sup>1</sup> The former are composed of one or two judges sitting with from two to five merchants of expert practical knowledge. On the latter sit representative employers and workmen. Both of these specialized courts deal with controversies arising in their particular fields when the amount involved does not exceed a certain sum, — 200 francs, for example. Appeal from their decisions may be taken to courts of the regular hierarchy. By simplifying and speeding up procedure and reducing costs, these courts have enormously facilitated and cheapened justice in the many small contro-

<sup>1</sup> Cf. H. L. Sumner, "Industrial Courts in France, Germany, and Switzerland," U. S. Bureau of Labor Bulletin, 24: 273-464 (January, 1912).

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versies arising between merchants or between employers and employees.

Criminal cases are tried in courts separate from those which deal with civil suits, except that on appeal some criminal cases may be carried before a division of the district court or of the superior court sitting as a criminal chamber. Petty offenders go before a police magistrate. The investigation of felonies is made in smaller districts by a court president, in some cantons by the *Bezirksstatthalter*. Questions of fact in criminal cases are decided by juries, which number six or nine members oftener than twelve. Jurymen are elected by the people in the manner already described.<sup>1</sup>

Criminal  
cases

The smallest unit of local government in Switzerland is the commune. Constitutional provisions and legal codes regulating communes differ from canton to canton, but there is sufficient uniformity of organization to permit description in general terms. Several varieties of this smallest self-governing unit are recognized. Thus there are the ancient burgher communes (*Bürgergemeinden*, *communes bourgeoises*), which are primarily economic in character and strictly limited as to membership. Many of these communes possess extensive estates in forest, meadow, and tillable land or other properties, the usufruct of which is apportioned among the burghers or devoted to the relief of their

Swiss  
com-  
munes

<sup>1</sup> See Chapter VII.

## GOVERNMENT OF SWITZERLAND

orphans and dependants. Then there are the parishes or church communes (*paroisses, Kirchengemeinden*), which include the members of a given religious confession who pay a church tax and elect certain ecclesiastical authorities.

By far the most important of these ultimate self-governing units, however, are the political or resident communes (*municipalités, Einwohnergemeinden*), which were first established under the Helvetic Republic (1798-1802). Unlike the exclusive burgher and church communes, these latter include all persons living within their boundaries whether local citizens or not, and indeed whether Swiss or foreigners.<sup>1</sup> Only those who are citizens of Switzerland may participate in the administration of the political communes, but all other residents must contribute to their support by paying taxes. Although limited as to territory, political communes differ widely in population. At one end of the scale are remote mountain hamlets of less than fifty in-

<sup>1</sup> The shifting of population under the stress of modern industrial forces has made the special privileges enjoyed by burghers seem unjust and invidious. As a result burgher communes have been merged with political communes in some parts of the country, the property of the former passing to the latter. In other cases the property of the burgher communes has been divided with the political communes. Finally there are cases in which the burgher communes — sometimes reduced to little close corporations jealously clutching all their ancient special privileges — continue to exist within the body of the political commune.

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habitants; at the other, cities of the largest size, up to and including Zürich with over 200,000 people. All together, there are 3164 political communes in Switzerland.

Like certain low forms of organisms, Swiss political communes are capable of indefinite scission without loss of vitality. Thus when neighborhood needs demand it the inhabitants of a given valley or district will form a school commune (*Schulgemeinde*), building their own schoolhouse, taxing themselves for its support, and supervising its conduct. Local or quarter communes of this sort (*Orts- oder Viertelsgemeinden*) are also formed to secure a better local water supply, better fire protection, and the like. At the same time these subdivisions remain subject to their larger political commune in all more important matters.

Quarter  
com-  
munes

On the other hand, political communes which are too small to provide for proper facilities in any line will unite for that one purpose. For example, there are numerous so-called *Zivil-gemeinde* formed in this manner, which take charge of cemeteries and burials within their collective territory, electing and paying the necessary officials.

In most of the smaller communes the principal organ of government is a town meeting, in which all Swiss citizens permanently domiciled in the commune usually have the right to vote. Some cantons impose a tax-paying as well as a resi-

The  
town  
meeting



## GOVERNMENT OF SWITZERLAND

dential qualification. The town meeting deliberates upon the more important communal affairs, passes ordinances, authorizes all larger expenditures, fixes the tax rate, and elects the communal officials. In cities which are too large for so democratic a form of government a city council or *Stadtrat*, sometimes called the greater city council (*Grosser Stadtrat*) to distinguish it from the smaller administrative council, is chosen by popular vote. This council takes definitive action upon matters of minor importance, and elaborates projects of major importance for acceptance or rejection by local referendum vote.

The  
communal  
council

The principal administrative authority of a commune is the communal council (*Gemeinderat*), usually of from five to nine members, although a smaller or larger number may be chosen according to the size of the place. There is a striking similarity between this body and the commission of one of our American commission-governed cities. The communal council is chosen either by town meeting or direct popular election. The presiding officer of this administrative board is usually known as the communal president; in cities as the city president. There is also a vice president. In all important matters the communal council acts as a body, so that the city president does not stand out as an independent authority like our American mayor. In large cities, however, the members of the administra-

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tive council divide their work, each undertaking the supervision of a department, as, for example, the department of schools, police, buildings, finances, etc. Sometimes a commission is chosen to undertake the direction of one of these departments.

Of the subordinate communal officials some are elected by the town meeting, while others are appointed by the administrative council. Their number varies, of course, with the size of the place. Prominent among these officials are the communal clerk, the treasurer, and the justice of the peace or mediator.

Other  
officials

The communes of Switzerland not only perform the ordinary functions of villages and cities in the United States, but have also entered upon a number of undertakings more commonly intrusted by us to county and even state governments. Thus the larger and richer communes maintain hospitals; asylums for the blind, deaf, and dumb; and other charitable institutions. In these works of mercy they receive generous support from private persons and philanthropic associations. Municipal playgrounds and baths, municipal museums, collections, and theaters are found in all the more important cities of the country. Excellent school buildings and equipment are the rule. Many communes have adopted the policy of municipal ownership and operation of waterworks, street railways, and gas and electric-lighting plants.

Good  
government in  
Swiss  
communes

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With the careful management characteristic of the Swiss, this policy has proved both successful and popular as a general rule. One of the secrets of the remarkable efficiency shown by Swiss communes in nearly all their manifold undertakings is the extraordinary facility with which they subdivide and unite for specific ends. In the simplicity and democracy of their organization as well as in the resourcefulness and economy with which their functions are performed they take high rank among the best-governed municipalities of the world.

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## CHAPTER XV

### THE CANTONS: FUNCTIONS

**S**WISS cantons "exercise all the rights which are not delegated to the federal government."<sup>1</sup> A large number of important functions fall within this sphere of residuary powers. The cantons legislate on poor relief and supervise the execution of such laws by the communes, often assisting the latter by subsidies. Many cantons have added extensively on their own account to federal regulations designed to promote the public welfare. Thus several of them have gone much farther than the central government in fixing standards for the protection of working women. Laws providing for the observance of Sundays fall within the competence of the cantons. The latter also have the power to license drinking places, and in this and other ways they endeavor to combat alcoholism. In coöperation with the federation the cantons issue regulations designed to safeguard the public health. They see to it that the pure-food laws are observed and take necessary precautions against the spread of contagious disease. Also they build and maintain hospitals, insane asylums, and sanitariums.

<sup>1</sup> Federal constitution, Art. 3.

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### Promotion of agriculture

In a country where agriculture bulks so large as in Switzerland, the effort of the cantons to promote this great economic interest is of prime importance. By legislation, and sometimes by subsidies, they have done much to improve the lot of the farmer. The cantons make contributions toward projects for the improvement of the soil, the draining of swamps, the construction of roads, cattle insurance, insurance against hailstorms, cattle prizes, and the like. A number of cantons maintain agricultural schools which are noted for their practical and highly efficient courses of instruction. They also arrange for "state fairs" not unlike those held in some of our own agricultural commonwealths.

### Industry and commerce

Much is also undertaken by the cantons for the promotion of industry and commerce. The industrial schools, industrial continuation schools, and industrial museums maintained by some of them are justly famous at home and abroad. Several cantons have passed laws against unfair competition, although much remains to be done to check certain abuses resulting from economic freedom. The cantons have also contributed greatly to the development of commerce and industry by the construction of splendid highways, the building and subsidizing of railroads, and the chartering of banks.

### Justice

A large part of the administration of justice is in the hands of the cantons. Enactment of

## THE CANTONS: FUNCTIONS

uniform federal codes has reduced their importance in this field, but cantonal laws still hold good in penal matters, and the cantons still provide for the organization of their courts and the choice of judges. Cantonal police protect life and property and maintain the public peace. Penal and correctional institutions, many of which are renowned for their humane and progressive management, are also maintained by the cantons.

In the field of local government, as we have already noted, the cantons are supreme. They enact codes for the regulation of the communes and supervise the administration of the latter.

The ~~whole common-school system~~ of the Schools country is administered or supervised by the cantons, subject to certain general rules laid down in the federal constitution. In 1848 the only educational power granted to the central government was that of establishing a university and a polytechnic school.<sup>1</sup> Advantage was taken of this provision to create the famous Federal Technical University in Zürich, but the project of a national university has not yet been realized. However, the interests of higher education are far from being neglected in Switzerland, for the cantons of this little country now maintain no fewer than seven universities, located at Basel, Zürich, Bern, Geneva, Lausanne, Freiburg, and Neuchâtel.

In 1874, a great step forward was taken by

<sup>1</sup> Art. 22, Constitution of 1848; Art. 27 in present constitution.

## GOVERNMENT OF SWITZERLAND

adding to the constitution a number of clauses extending the power of the federation in the field of education.<sup>1</sup> The cantons were to continue providing for primary instruction, but they were to see to it that it was sufficient in amount; that it be placed exclusively under secular authority; that it be made compulsory, free, and of such a character that the public schools might "be frequented by the adherents of all religious confessions, without any offense to their freedom of conscience or belief." There was a distinctly minatory note in the concluding clause of this article, to the effect that "the federation shall take the necessary measures against such cantons as do not fulfill these duties."

➤ The establishment of federal control in this field proved more difficult than was anticipated, however. In 1882, a law was passed under the article just referred to, providing for the creation of the office of secretary of education. Immediately the friends of local autonomy in education invoked the referendum, and with the support of the religious prejudices of the Catholic cantons this law was overwhelmingly voted down, November 26, 1882. Realizing that persuasion is better than force, the advocates of federal supervision finally succeeded in securing an amendment to the constitution in 1902,<sup>2</sup> which, while expressly

<sup>1</sup> Art. 27, clauses 2, 3, and 4 of present constitution.

<sup>2</sup> Art. 27 ii, adopted by referendum vote on November 26 of that year.

## THE CANTONS: FUNCTIONS

recognizing that the "organization, direction, and supervision of the primary schools shall remain within the competence of the cantons," provides further that subventions shall be granted to the cantons in order to aid them to fulfill their duties in the field of primary instruction. Taking advantage of this new power, a law of June 25, 1903,<sup>1</sup> authorizes a federal school subsidy amounting to 60 centimes per capita of the population, which may be increased to 80 centimes in eight mountain cantons, owing to the special difficulties due to their situation. The law expressly provides that cantonal appropriations for educational purposes are not to be diminished because of the receipt of the federal subsidy.

Federal  
school  
subsidies

In spite of this development of federal power, the measure of autonomy in school affairs which remains to the cantons is very extensive. No doubt this results in comparatively low standards in certain parts of the country, but it permits the adaptation of methods to local conditions everywhere. Nor is there anything to prevent the more progressive cantons from establishing higher requirements than those of the central government. Thus, while the federal law fixes twelve as the limit of primary-school age, it has been raised to fourteen, fifteen, and even sixteen years in some cantons. Taking the country as a whole, educational standards are

Edu-  
cational  
stand-  
ards

<sup>1</sup> A. S. XIX, 709.



## GOVERNMENT OF SWITZERLAND

generally excellent. In 1910, only one in a thousand of the young men who presented themselves for military training could not read, and only three in a thousand could not write. During the year following, the total expenditure on instruction amounted to eighty-six million francs, of which slightly more than half (51.6 per cent) was raised by the communes, the rest being raised by the cantons.

Teaching  
of civics

Swiss education excels in two particulars: its universality and its highly practical character. As to the first, the people thoroughly understand that a form of government so democratic as their own will work only upon condition that there is the widest possible diffusion of education. For the same reason they give particular attention to instruction in civics, Swiss manuals on this subject being marvels of clarity and completeness. As to the second point, the Swiss have always been noted as an eminently practical people, and it is not strange therefore to find that there is hardly a trade or vocation in life for which excellent preparation is not offered in common or special schools. For example, there are schools in silk weaving, wood and iron working, watch and clock making, embroidery, and household management. In addition there are the numerous agricultural schools referred to above, with specialized courses such as fruit growing, vegetable gardening, bee culture, etc.; a number of commercial schools, mercantile

Voca-  
tional  
training

## THE CANTONS: FUNCTIONS

secondary schools, and commercial high schools; and finally the administration schools which prepare young men and women for the federal post, telegraph, telephone, and customs services.

The direct military powers of the cantons, once quite considerable, have been greatly reduced by the progress of centralization in this field. Nevertheless, excellent preparation for army service is afforded by the thorough gymnastic training given in the common schools. Careful attention is devoted to school hygiene, including periodical medical inspection, provision of baths for pupils, supervised sports and hikes through the most beautiful parts of the country, vacation colonies, milk cures, and school lunches. "Our people," says M. Seippel, "have always understood that in elevating their children they were elevating themselves." Pedagogically the Swiss remain worthy of having produced a Pestalozzi, a Rousseau, and a Père Girard.

Students familiar with American state government should have no difficulty in understanding the functions thus far described of Swiss cantonal governments. It will not be so easy for them, however, to comprehend the religious powers exercised by the latter. The historical backgrounds are widely different in the two cases. In this connection it is particularly well worth remembering that Switzerland is the only European country which fought a religious war — that of the Sonderbund — during the nineteenth

## GOVERNMENT OF SWITZERLAND

century. Out of that war there came the present constitution, the general provisions of which with regard to religion and freedom of conscience have already been presented.<sup>1</sup> Since 1848, religious bitterness has largely disappeared in Switzerland. Nevertheless, all but two of the cantons still maintain established churches. Nine cantons support the Roman Catholic confession exclusively; fourteen have Evangelical national churches.<sup>2</sup> Of the latter, one supports the Protestant confession only, while the remaining thirteen contribute also to the support of one or more of the Catholic factions. In one canton the Jews too receive state aid. Zürich, Bern, and Graubünden also recognize dissenting groups, at least to the extent of permitting them to use the church buildings of the parent denomination at hours other than those reserved for orthodox services.

The ecclesiastical law of each canton determines the local relation between church and state. Control by the latter is much closer in some cantons than in others. The internal government of the established churches also varies from extreme democracy to moderate aristocracy. Frequently the congregation elects the pastor and other church officials, and it is, in general, the great source of authority. In

<sup>1</sup> See Chapter III.

<sup>2</sup> Protestants have a majority of the population in twelve cantons, Catholics in ten.

## THE CANTONS: FUNCTIONS

Neuchâtel, on the other hand, the synod of ministers was for a long time all powerful. Within the limits set by the federal constitution, however, the ecclesiastical law of each canton may be amended freely by its legislature. Ministers are paid by the state out of taxes specially levied for this purpose. The members of each denomination receiving support are subject to such taxes. In certain Protestant cantons, however, persons may evade payment by making a declaration that they have given up church membership.

For a long time there has been a considerable movement among the Swiss in favor of disestablishment. The separation of church and state in France (1905) added impetus to this movement, with the result that Geneva and Urban Basel have since enacted laws disestablishing their state churches. A similar proposition was voted down in Neuchâtel in 1906.

Owing to its historic fame as a leader in the Reformation, Geneva's decision on this issue is particularly interesting. As a result of French immigration the majority of the population of that canton became Catholic in 1900. This majority, however, was split into factions, part belonging to the orthodox Roman Catholic confession and others to the so-called Old Catholics, a nationalistic sect which had broken away from the mother church early in the seventies. At first the Old Catholics enjoyed considerable

Dis-  
estab-  
lish-  
ment  
in  
Geneva

## GOVERNMENT OF SWITZERLAND

success and were given, probably not without a certain anti-papal malice on the part of Genevan Protestants, exclusive use of the church of Notre Dame. Naturally this arrangement was distasteful to the orthodox Catholics, who as they grew in power became stronger in advocacy of disestablishment. In this position they were supported by radicals opposed to any connection between church and state, and by not a few Protestants who believed that the dignity and effectiveness of the church would be enhanced if it gave up all connection with the government. With the combined support of these various elements a separation law was passed by the cantonal legislature, and on June 30, 1907, was ratified by referendum. In accordance with the terms of this law Geneva, the "Protestant Rome," dropped from her budget, beginning January 1, 1909, all appropriations for religious purposes excepting pensions paid to aged ministers.

### Cantonal taxes

In order to carry on all the varied functions recapitulated above, the cantons exercise wide powers of taxation. The general constitutional principles operating in this field, particularly ~~the segregation of direct taxes for the use of the cantons,~~ have been discussed elsewhere.<sup>1</sup> There is great diversity in the tax systems of the various cantons. In 1900, about 13 per cent of their total income was made up of contributions from the federal government; 30 per

<sup>1</sup> See Chapter VIII.

## THE CANTONS: FUNCTIONS

cent from direct taxes on land, property, and incomes, and from poll taxes; 12 per cent from inheritance and transfer taxes; about 5 per cent from dues for franchises granted by the state; 10 per cent from monopolies such as the sale of salt, which is a state monopoly in all cantons, and from state enterprises such as cantonal banks and mortgage-loan banks; 13 per cent from productive property in mountain pastures, forests, vineyards, etc.; and the remainder from various small sources, including departmental income and fees.<sup>1</sup>

In a large majority of the cantons the direct taxes on property and income are progressive. Most of them tax income from property at much higher rates than earned income. Under the circumstances it is perhaps not unnatural that tax dodging is alleged to be by no means uncommon in Switzerland. It is said that before taking up their residence in certain cantons, wealthy persons are wont to arrive at an understanding with local tax officials regarding the figure at which they are to be assessed. In nine cantons an effort is made to combat the evil of tax dodging by a peculiar device known as "*Inventarisatio*." This consists in the seizure and retention of the property of a deceased person until its value can be ascertained. If it is discovered that false returns have been made, heavy punitive taxes are collected from the

<sup>1</sup> J. Steiger, "Finanzhaushaltes der Kantone," Pt. I, p. 33.

## GOVERNMENT OF SWITZERLAND

*Inven-  
tarisa-  
tion*

estate. *Inventarisatio*n is effective, but it is rather hard on the sorrowing family, particularly in cases where there has been no tax dodging. The employment of this process is also said to stimulate the giving away of considerable amounts of property by persons who anticipate death in the near future.

During periods of unsettlement, direct taxes show far less shrinkage than indirect taxes. For this reason cantonal finances have not been so much affected by the war as the finances of the federation. It must be remembered, too, that the heavy burden of mobilization fell almost entirely upon the central government. Some cantons have even shown financial gains since the war began, but most of them have been forced to increase rates and seek new sources. Their situation will also be somewhat relieved by the shares to be paid over to them from the new federal war taxes.<sup>1</sup>

**Cantonal  
treaty  
powers**

Swiss cantons still possess a minimum of power in the making of certain kinds of treaties with foreign countries. Since 1848, however, "all separate alliances and all treaties of a political character between the cantons are forbidden" (Art. 7, cl. 1). This provision effectually disposed of the danger of future Sonderbunds, or separate leagues within the federation. But a later clause of the same constitutional article permits the cantons "to make conventions among them-

<sup>1</sup> See Chapter VIII.

## THE CANTONS: FUNCTIONS

selves upon legislative, administrative, or judicial subjects. In all cases, however, they shall bring such conventions to the attention of the federal officials, who are authorized to prevent their execution if they contain anything contrary to the federation, or to the rights of other cantons. Should such not be the case, the contracting cantons have the right to call upon the federal officials for their coöperation in the carrying out of the convention" (Art. 7, cl. 2).

Under this provision of the federal constitution groups of cantons have repeatedly been formed to secure common action in certain fields. Conventions or agreements of this character are called "concordats." It is the custom to leave concordats open, so that cantons which do not join them at first may do so later. Mention has already been made of the concordat regulating the use of automobiles and motor cycles.<sup>1</sup> In 1894, all the cantons except Glarus came to an agreement regarding a common pharmacopeia. The latest illustration of this kind of joint action dates from 1911, when fourteen cantons united in a guarantee of mutual assistance in the execution of all claims falling within the field of public law, especially tax claims.<sup>2</sup> Subsequently eight other cantons have announced their acceptance of this measure.

The Swiss method of the concordat solves in an easy, legal, and perfectly safe way the prob-

<sup>1</sup> See Chapter IX.

<sup>2</sup> A. S. XXVIII, 621.



## GOVERNMENT OF SWITZERLAND

lem of securing uniform legislation and administration on the part of the states of a federal union. In the United States we have made much less progress toward its solution, although our needs in this line are incomparably greater owing to the very large sphere of legislative powers reserved to the states. Our failure to accomplish more is due in part to the silence of the federal constitution on this subject, as a result of which we have been obliged to invent extra-legal agencies, such as the so-called "House of Governors," in order to promote interstate comity and uniform legislation.<sup>1</sup>

### Citizen- ship

The few general provisions of the Swiss federal constitution on citizenship have been presented already.<sup>2</sup> They culminate in a clause to the effect that "every citizen of a canton is a Swiss citizen" (Art. 43). As a rule cantonal constitutions simply pass the matter one step farther on by providing that every citizen of a commune is a citizen of a canton. In general, therefore, the naturalization policy of Switzerland is left to the independent, not to say arbitrary, decision of the innumerable communes of the country. There is only one restraint upon their action, and that of a purely negative character. A federal law requires the approval of the Federal Council, given upon the advice of its Political Department, before communal

<sup>1</sup> Cf. Beard, "American Government and Politics," p. 406, note.

<sup>2</sup> See Chapter III.

## THE CANTONS: FUNCTIONS

and cantonal citizenship can be conferred upon any person.

Now although the communes of Switzerland may be admirably constituted for the performance of the functions of local government, they are most emphatically not qualified to decide a matter so intimately related to the national interest as naturalization. This is particularly the case with the citizen communes, which are preferred in the exercise of this function wherever they exist. Usually the number of citizens of such communes is markedly smaller than the number of local residents. Newcomers who might become a burden upon the poor rate are not desired as citizens. Moreover, the citizen communes own valuable properties in the *Allmends*, or common pastures, forests, etc., from which they derive not inconsiderable revenues. Naturally the beneficiaries place every possible obstacle in the way of new members. Thus, fees are charged which sometimes run into the hundreds of francs. Where citizen communes do not exist, naturalization is in the hands of the political communes. Having no direct economic interest at stake, the latter confer citizenship much more readily. The result is a total absence of uniformity, naturalization being relatively easy and cheap in one place while in another close by it is absurdly difficult and costly.

Prior to the present war this condition, anomalous as it was, caused no great complaint.

## GOVERNMENT OF SWITZERLAND

Foreigners generally were quite satisfied to be recognized merely as residents, finding that this entitled them to a full measure of economic and social rights. In the year 1910, the number of cases of naturalization occurring in Switzerland amounted to only eighteen per cent of the foreigners arriving in that year, and to only seven tenths of one per cent of the total number of foreigners then domiciled in the country. But with the outbreak of war a rush began to obtain Swiss citizenship and with it the protection of a government strongly committed to a policy of neutrality. Some communes, it must be admitted, were not superior to the temptation of coining large sums of money out of the situation. In 1915, one little Bernese town admitted 263 citizens at 300 francs each, while the capital city of that canton admitted only fifteen. During the same year the number of persons naturalized in Switzerland as a whole was three times as great as the average for years preceding the war. It will be recalled that many foreigners resident in the country are political and military refugees whose acceptance as citizens might lead to international unpleasantness. All in all, there is urgent demand for a drastic reform of the naturalization process, which will eliminate local caprice, abolish the mercenary element, and establish uniform standards throughout the whole country.

According to Lord Bryce, the nearest parallel

## THE CANTONS: FUNCTIONS

to an American state is to be found in the cantons of Switzerland.<sup>1</sup> As the preceding chapter showed, however, these two units of government differ sharply so far as organization is concerned. Nevertheless, many of our American states have modified their structure considerably by introducing the initiative and referendum in more or less conscious imitation of Swiss models. On the side of function, with the exception of church establishments, Swiss cantons are indeed a very close parallel to American states. Apart from education and social reform we of the United States have been too little interested in Swiss cantonal experience. The Swiss, on the other hand, have observed the practice of our states with great care and much profit to themselves.<sup>2</sup> Thus the experiments made by American states in such fields as penal reform, municipal government, expropriation, federal guarantees, electoral methods, and the like, have been reflected in the debates of many Swiss cantonal legislatures.

American  
states  
and  
Swiss  
cantons

<sup>1</sup> "American Commonwealth," edition of 1910, Vol. I, p. 413.

<sup>2</sup> W. E. Rappard, "Suisse et États-Unis," pp. 10 *et seq.*

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## CHAPTER XVI

### PROPORTIONAL REPRESENTATION IN SWISS CANTONS

**T**HE inequities arising from a majority or a plurality system of election are a commonplace of political observation. Under either system the results are particularly bad when several parties contend for the mastery in large districts to each of which a number of representatives are apportioned. If the districts have been artfully gerrymandered, conditions may become well-nigh intolerable.

Evils of  
majority  
or  
plurality  
system

A few decades ago abuses of this sort were endemic in a number of Swiss cantons. Thus in Geneva an election held October 7, 1846, resulted in giving the Conservatives, with 1342 votes, twenty-nine seats in the Grand Council, whereas the Radicals, with 1409 votes, obtained only nineteen seats! On this occasion the Radicals resorted to violence. Election riots due to similar causes were by no means unknown in other cantons. Particularly was this the case in Ticino, where the Conservatives also had a strangle hold on the situation. As a result violence occurred there in 1889, on a scale sufficient to make federal intervention necessary. Only a year later open rebellion broke out, and again the federal government had to intervene.

## GOVERNMENT OF SWITZERLAND

Pro-  
portional  
repre-  
sentation  
as a  
remedy

Beginning in the sixties a group of earnest Swiss reformers advocated proportional representation as a means of avoiding all these evils. Their first practical success was in Geneva, which adopted the new method for the election of its legislature in 1892. The electoral difficulties in Ticino led the Federal Council itself to suggest to the warring parties of that canton that they try proportional representation as a remedy. Accordingly it was adopted as part of the constitutional revision of 1892. At once party peace was restored, nor has it since been broken. Subsequently proportional representation has been adopted for the election of the legislature in ~~18~~ other cantons, or ~~17~~ in all.<sup>1</sup> Four of these have also introduced it in mandatory or optional form for communal elections. Two cantons which do not employ it in legislative elections (Freiburg and Valais) provide for it in communal elections. The city of Bern went over to proportional representation in 1899, and was followed by Biel in 1908. At the present time it is employed in one manner or another by rather more than half the population of Switzerland. Efforts to introduce it into elections for the National Council have been discussed elsewhere.<sup>2</sup>

17 in 1721

<sup>1</sup> Names and dates as follows: Neuchâtel and Zug, 1894; Solothurn, 1895; Urban Basel, 1905; Schwyz, 1907; Luzern, 1909; St. Gall, 1911; and Zürich, 1916.

<sup>2</sup> See Chapter IV.

## PROPORTIONAL REPRESENTATION

Generally the so-called list form of proportional representation is the method employed in Switzerland. All forms require that each election district shall choose a number of representatives, and that these shall be divided among the parties proportionately to their voting strength. It follows, of course, that the larger the number of representatives to be elected in any one district the better the chance of small parties to score a success. Thus with three representatives a minority party must cast one third of the total vote to be entitled to one seat; with six to elect it need cast only one sixth of the votes to secure one seat, and so on. It would be easy, however, to carry this too far, with the result that voters might be compelled to choose between four, five, or more long lists of candidates' names submitted by as many different parties.

List form  
of propor-  
tional  
representa-  
tion

Many minor and confusing differences of method prevail among the Swiss cantons as to proportional representation. Perhaps the best way to illustrate the system is by the citation of actual figures. The following are taken from an election held in the Spalen quarter of Urban Basel, May 6 and 7, 1905, to choose sixteen members of the Grand Council:<sup>1</sup>

An  
actual  
illus-  
tration

<sup>1</sup> E. Klöti, "Texte der schweizerischen Verhältnisswahl-Gesetze," p. 90. Urban Basel, it will be recalled, is a city state, and the Grand Council or cantonal legislature is identical with the city council.



# GOVERNMENT OF SWITZERLAND

List I	List II	List III	List IV	Sacher, R.	Huber
Gérber. .... 1074 Strütt. .... 716 Gürtler. .... 738 Hauser. .... 512 Heitz. .... 478 Distel. .... 532 Lohmüller. 318 Ringier. .... 349 Rufer. .... 439 Plattner. .... 302 <i>Name votes</i> . 5458 <i>List votes</i> . . 860 <i>Total votes</i> .. 6318	Rupe. .... 816 Sattler. .... 513 Müller. .... 478 Keller. .... 304 Fechter. .... 380 Lüscher. .... 253 Lang. .... 293 Locher. .... 251 <i>Name votes</i> 3288 <i>List votes</i> . 1458 <i>Total votes</i> . 4746	Schaffner. . 324 Schäublin. 274 Mayer. .... 191 <i>Name votes</i> . 789 <i>List votes</i> . 2420 <i>Total votes</i> . 3209	Moser. .... 304 Rudin. .... 178 <i>Name votes</i> . 482 <i>List votes</i> . 1111 <i>Total votes</i> . 1593	Sacher. .... 1014 <i>Total vote</i> . 1014	Huber. .... 318 <i>Total vote</i> . 318

## PROPORTIONAL REPRESENTATION

Although referred to above simply as Lists I, II, III, and so on, each such list represents a political party the name of which actually appears on the ballot under the list number. In Urban Basel nominations may be made by any ten qualified electors. No candidate's name may appear upon more than one ballot. Each voter may cast as many votes as there are representatives to be elected in his district. He can use one of the official printed lists or tickets, scratching it at will, or he can fill in a blank list to suit himself. In order that personal preference may be shown among the candidates of a party, the voter may cast two or three of his votes for one candidate. If a voter casts too many votes, those coming last on his list and which are in excess of the legal number are disregarded. If he does not cast the full number permitted by his list, those which he leaves vacant are nevertheless counted as "list votes," to the general advantage of the ticket.

The total vote for each list and for the two independent candidates noted above is as follows:

List I	6318
List II	4746
List III	3209
List IV	1593
Sacher (Ind.)	1014
Huber (Ind.)	318
Total	17,198

To ascertain the "election number," this total

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## GOVERNMENT OF SWITZERLAND

The  
election  
number

is divided by the number of seats to be filled plus one, or in the case before us, by seventeen.<sup>1</sup> The result ( $17,198 \div 17$ ) is exactly  $1011\frac{1}{7}$ , which is rounded off to the nearest whole number, or 1012.

Next the total vote of each list is divided by the election number, as follows:

List I	6318	+	1012	=	6
List II	4746	+	1012	=	4
List III	3209	+	1012	=	3
List IV	1593	+	1012	=	1
Sacher	1014	+	1012	=	1
Huber	318	+	1012	=	0

Seats in the Grand Council are assigned accordingly, six to List I, four to List II, and so on.

Distribution  
of extra  
seats

Usually this procedure disposes of all the seats and thus terminates the election. Sometimes, however, one or more seats remain unfilled after the division of the total vote of each party by the election number. In such cases the extra seats may be assigned to the parties with the largest total vote, or with the largest remainder after the division of their total vote by the election number. So far we have disposed of only fifteen seats in the example under consideration, and one more remains to be assigned. According to the law of Basel this is accomplished

<sup>1</sup> By this method there is a greater chance of filling all the seats at the first division and also of avoiding large remainders, than when the total vote is divided by the exact number of seats to be filled.

## PROPORTIONAL REPRESENTATION

by a somewhat involved process, which, however, is considered to approximate very closely to the ideal of exact proportion. The total number of votes cast for each list is divided by a number equal to the number of seats already assigned it plus one, and the remaining seat is assigned to the list showing the largest quotient. Thus in the case before us:

	Number of votes	Divisor	Quotient
List I.....	6318	7	902 $\frac{1}{2}$
List II.....	4746	5	949 $\frac{1}{2}$
List III.....	3209	4	802 $\frac{1}{2}$
List IV.....	1593	2	796 $\frac{1}{2}$
Sacher.....	1014	2	507
Huber.....	318	1	318

Accordingly the one extra seat is assigned to List II, and the election shows the following final result: List I, six seats; List II, five seats; List III, three seats; List IV, one seat; and Sacher, Independent, chosen. All that remains to be done is to designate as elected in each list the candidates with the highest individual votes, to the number each list is entitled to. The successful candidates are indicated by brackets in the table on page 352.

If an office holder elected under proportional representation decides later to resign or is removed, the vacancy is usually filled by the unsuc-

## GOVERNMENT OF SWITZERLAND

cessful candidate of the same party or list who polled the highest individual vote at the latest election. In this way by-elections are obviated. The underlying assumption is that party strength remains the same from one regular election to the next, which may or may not be the case.

### Arguments for pro- portional represent- ation

Proportional representation is usually advocated on grounds of justice and fair play. It prevents the overpowering of small parties by unduly swollen and sometimes brutal majorities. By enabling even small minority groups to obtain representation in the legislature, it gives a voice on public affairs to every new party, reform organization, business class, or social group which can muster any considerable strength. Under this election system new and progressive points of view find early utterance in the legislature, and modify, if they do not control, the conduct of government. The bitterness of suppressed minorities, as well as any excuse for violence on their part, is thus removed.

Advocates of the older system of election usually admit that it works to the advantage of the stronger party. However, they sometimes maintain that the over-represented majority may be trusted to give sufficient consideration to the interests of the under-represented minority. To the latter argument, Dr. Emil Klöti, a leading Socialist authority on proportional representation in Switzerland, replies as follows: "The minority pays taxes and performs military service just the

## PROPORTIONAL REPRESENTATION

same as members of the majority, and therefore it cannot be satisfied with representation received as alms from the hand of the majority, and, at that, only when it pleases the latter to perform a moral deed. It [the minority] wishes no alms and no favors; what it desires is the opportunity — granted as a correlate of its civil obligations — to coöperate effectively in the choice of representatives of the people, in other words the right to its own representation in the legislative body. . . . As in matters of religion, so also in matters of politics, it requires a quite considerable conquest over self on the part of convinced members of a party before they can attain to the view that *each* political party has a justification for its existence. Proportional representation has this principle of political toleration as its foundation, and for that reason must struggle so hard to make its way. How many, many citizens there are still in Switzerland who believe that Social Democracy has no right to exist, and should be ignored as far as possible in all elections. How many others there are also who hold similar intolerant views against the Catholic Conservatives. . . . From the point of view of public law in general, proportional representation indicates a noteworthy democratic advance. It consists not in the creation of a new institution, but in the improvement of the already existing system of popular representation, and — in our democracies — of

## GOVERNMENT OF SWITZERLAND

the referendum and the initiative, so that these may perform better than formerly the tasks imposed upon them. . . . That proportional representation cannot create a political Eldorado is, however, obvious."<sup>1</sup>

Argu-  
ments  
against  
pro-  
portional  
repre-  
sentation

① Against proportional representation the argument is made that it is an extremely complicated and artificial system, running at times into rather abstruse mathematical computations. In spite of this objection election bureaux composed of Swiss peasants, with perhaps some help from the village schoolmaster, manage to solve such problems correctly. The list system as used in Switzerland, it is further alleged, emphasizes party lines. Moreover, if all parties nominate tickets in which the number of candidates is only slightly in excess of the number they may reasonably expect to elect, the choice of the voters may be considerably restricted. Thus in the case of Basel, cited above, even with two independents running the people had to select sixteen out of a total of only twenty-five candidates. On the other hand, if each of a number of parties nominates a full ticket the ordinary voter will be unable to choose intelligently from the long lists of names presented to him.

Advocates of the present election system admit that it usually results in a representation of the majority in excess of its deserts. Although somewhat inequitable, this has one distinct

<sup>1</sup> "Die Proportionalwahl in der Schweiz," p. 302.

## PROPORTIONAL REPRESENTATION

advantage, — the dominant party is placed in a position to carry out its policies without too much partisan interference. If it succeeds, so much the better for the state. If it fails, the minority may be elevated to power at the ensuing election. In either event the situation is vastly better than the chaos of indecision, inefficiency, and bargaining which would result with the legislature dissolved into a large number of petty parties and groups by proportional representation.

Another favorite argument advanced by members of the dominant Radical party in Switzerland is that proportional representation with its lists and computations dissolves that intimate personal relation between representative and voter which exists, or is assumed to exist, under a system of majority or plurality election. From this party angle an opponent of the reform writes: "In place of an individual choice among candidates, there is a decision by the voter for or against whole groups of candidates. The right of the voter to make certain changes in the lists is of no great importance, since the system demands fundamentally that the voter shall accept entire lists without change. . . . This proceeding is all the more opposed to Liberal principles, since in accordance with its nature proportional representation demands the largest possible election districts. Hence the number of candidates grows greater and greater, and the electoral activity of the individual is reduced



## GOVERNMENT OF SWITZERLAND

merely to the taking of a position in favor of a given list or party tendency. . . . Such elections *en masse* cannot fail to exert an influence upon the sense of responsibility of the electors as well as the elected. . . . From a unit responsible for his individual choice, the voter becomes a small numerical element of a party. The successful candidate becomes a member of a collective group of representatives, and the danger is by no means inconsiderable that his feeling of personal responsibility may gradually be transformed into a more or less definite collective responsibility.”<sup>1</sup>

Partisan  
interests  
involved

Besides these general arguments for or against proportional representation, motives of partisan advantage also play a considerable rôle. The various minority parties of Switzerland usually stand to win many new seats under proportional representation and thus favor it warmly.<sup>2</sup> On the other hand, the dominant Radical party sees its majority threatened by this reform, and therefore opposes it energetically. For

<sup>1</sup> “Liberalismus und Verhältniswahl,” in the *Neue Zürcher Zeitung*, December 8, 1916.

<sup>2</sup> The force of this consideration is strikingly shown by the election for the cantonal legislature of Zürich in 1917, — the first to be held under the system of proportional representation. In the preceding legislature the Socialist groups had only 46 seats as against 176 held by the various civil (anti-Socialist) parties. The election of 1917 increased the number of Socialist seats to 86, and reduced the number of anti-Socialist seats to 137.

## PROPORTIONAL REPRESENTATION

immediate political effect general arguments and partisan considerations are combined in various proportions and presented with maximum emphasis by orators and in the press. Cases in point are furnished by the following translations of appeals made to the voters of Zürich immediately prior to the submission of the initiative providing for proportional representation in that canton:

*(Against the Initiative)*

### Regarding the Vote of Proportional Representation

Fellow Citizens! We recommend that on next Sunday you vote *against* the initiative providing for the introduction of proportional representation.

Now as heretofore this system of voting appears to us to be *artificial* and difficult to understand. It is absolutely opposed to the essential concept of elections as held by our civil (i.e., anti-Socialistic) voters, because it does away with the personal relation between electors and elected. Also it dissolves the close relationship between the representative and the district from which he is elected.

From the innovation only the extreme parties will derive an *advantage*, above all the *Socialist party*. Do you wish to increase the influence of the Socialist advocates of a class struggle and of other subversive groups?!

It will bring *disadvantage* to the civil parties. Once more *opposition* will spring up between them. *The good understanding between city and country will be endangered.*

Fellow Citizens! Do not forget that the initiative before you is of such a character that even the friends of the new system of elections who belong to the civil parties have objected to it. The practice of substitution is

Popular  
appeal  
against  
proportional  
representation

## GOVERNMENT OF SWITZERLAND

retained, resulting in an *unmoral* snaring of votes, which *falsifies every election return*. Our administrative districts are too large for electoral purposes. The *desires of whole sections of such districts* for representation in the Cantonal Council are *put in doubt*.

It is not a question of electoral justice, — that is a false and empty *campaign cry*. It is a struggle for power in the state. Shall it be transferred more and more to the Socialists? Are not forty-three of them in the Cantonal Council enough? Or shall seventy or more of them be sent to the legislature to air their views?!

To state this question is to answer it. We do not desire to weaken the influence in the state of the parties of order, of men who believe in quiet progress and well-directed civic effort, of the thoroughly rooted sections of our citizenship, — namely, the agricultural, industrial, and mercantile classes.

AWAY WITH PROPORTIONAL REPRESENTATION. We shall vote as a mass

**NO**

(Signed)

**Campaign Committee against Proportional Representation  
for the Cantonal Council**

## PROPORTIONAL REPRESENTATION

*(For the Initiative)*

**We shall Vote for  
Proportional Repre-  
sentation**

because this method of elec-  
tion assures each party as many  
representatives in the Cantonal  
Council as it is entitled to in  
accordance with its vote.

**We shall Vote for  
Proportional Repre-  
sentation**

because it makes the electoral  
campaign a struggle over prin-  
ciples, thus discouraging un-  
clean political maneuvers and  
attacks on personal character.

**We shall Vote for  
Proportional Repre-  
sentation**

because it alone brings prog-  
ress and opposes reaction.  
It places the power of the  
state in the hands of the  
people.

**We shall Vote for  
Proportional Repre-  
sentation**

because through it alone the  
lesson of the World War may  
be made to bear fruit for our  
canton. Proportional Repre-  
sentation alone will make  
possible the reform of the  
military system and of the  
finances of the state.

*(Signed)*

**The Initiative Committee**

**Popular  
appeal  
in favor  
of  
pro-  
portional  
repre-  
sentation**

Upon reference to the people of Zürich on  
December 10, 1916, the initiative referred to  
in the above manifestoes was carried by a vote  
of 48,601 to 41,906. A tremendous impetus

## GOVERNMENT OF SWITZERLAND

was given to the movement for proportional representation by this decisive victory in the second largest canton of the country. The advocates of "*Proporz*," as the reform is familiarly called by the Swiss, now look forward confidently to its success at no distant date in a number of other cantons and in the federation. It is significant that no canton which has adopted proportional representation has ever returned to the old system of voting.

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## CHAPTER XVII

### LANDSGEMEINDE CANTONS: PURE DEMOCRACY IN STATE GOV- ERNMENT

THE most picturesque and fascinating political institutions in Switzerland, perhaps in the world, are the Landsgemeinden, which exercise supreme legislative power in two whole cantons, — Uri and Glarus; and in four half cantons, — Upper and Lower Unterwalden, Appenzell Interior and Exterior. Other cantons have subjected their representative legislators to a very considerable degree of democratic control by means of the initiative and referendum, but in these six the people themselves meet at least once a year to carry on their own government. Our nearest approach to this Swiss institution is the New England town meeting, but the latter, of course, deals only with questions of local government, whereas the Landsgemeinde cantons are as fully sovereign as any of their sister commonwealths under the federation.

The  
six  
demo-  
cratic  
cantons

There has been a great deal of controversy as to the origin of the Landsgemeinde. At the time when historic records begin it was apparently an outgrowth of the *Hofgericht*, or feudal manorial court. As the name indicates, such courts were primarily judicial bodies. Under the guidance

Origins

## GOVERNMENT OF SWITZERLAND

of appointed magistrates, the countrymen of the district acted as juries in cases coming under the customary law of the neighborhood. In the higher Alpine valleys, remote from overlords, it is not difficult to conceive how the popular elements of these courts might contrive to accumulate political powers in their own hands. The Perpetual League of 1291, for example, shows them objecting to "any judge who has obtained his office for a price," and to "one who is not a native or resident with us." During unsettled times, when no magistrate appeared, the Landsgemeinde may have chosen its own judge and afterward maintained the right to do so. Similarly with the legislative powers it acquired.

Besides its derivation from the manorial court, the Landsgemeinde is also indebted to the primitive mark system in accordance with which the common land, meadows, and Alpine pastures were distributed and cultivated. We have already noted the great extension of pure democracy in the government of the local communes of Switzerland, many of which still retain their *Allmend* or common property. The very name "Landsgemeinde" would seem to indicate the common origin of the two institutions. For while the Landsgemeinden deal with part sovereign affairs, they are essentially "national communes," or, as H. D. Lloyd prefers to call them, "state communes."

Many writers express the opinion that the

## LANDSGEMEINDE CANTONS

Landsgemeinde is a descendant of the ancient Teutonic folk-mote described by Tacitus. The theory is a fascinating one, but it must be remembered that twelve centuries elapsed between the time the Roman historian wrote his classic description and the first recorded Landsgemeinde, and also that during this period feudalism swept over Switzerland, invading even the most inaccessible of its Alpine valleys.

The earliest Landsgemeinde in which rights of self-government were exercised was held in Uri as early as 1233 or 1234. Our modern interest in the institution is due, however, to its exercise of legislative powers. In the latter sense the first Landsgemeinde was that of the men of Schwyz in 1294, who enacted a very important law taxing monasteries in the valley and the goods of aliens, as well as prohibiting the sale of real estate to either. It is worthy of note that the Landsgemeinde is older than the state; at least, it antedates the independence of the cantons in which it afterwards became the paramount political institution. With the exception of the period of the Helvetic Republic, when they were suppressed by the French, Landsgemeinden have had an uninterrupted existence in Uri and Unterwalden from 1309 on; in Glarus since 1387; and in Appenzell since 1403. In these democratic cantons "an immemorial freedom, a freedom only less eternal than the rocks that guard it, puts to shame the

Earliest  
legis-  
lative  
Landsgemeinde,  
1294



## GOVERNMENT OF SWITZERLAND

boasted antiquity of kingly dynasties, which, by its side, seem but as innovations of yesterday.”<sup>1</sup>

At one time in the seventeenth century there were eleven *Landsgemeinden* in Switzerland. Part of these, however, were due to schisms caused by the Reformation. It was not unusual for the *Landsgemeinden* of this period to be marked by turbulence. They seem also to have been subject to a considerable amount of electoral corruption, judging from the number and severity of the laws enacted against “*das Praktizieren*,” as this evil is familiarly called in Switzerland.<sup>2</sup>

In only eight cantons did the *Landsgemeinde* survive into the nineteenth century. One of these was Schwyz, the population of which grew too large and boisterous to be governed successfully by a democratic assembly. After the canton’s unsuccessful experience in the Sonderbund war, it established a legislature in 1848. During the same year Zug, the *Landsgemeinde* of which had possessed but a shadow of sovereignty since the period of the French intervention, went over to the representative system. Since 1848 the number of democratic cantons has remained unchanged at six.

In each *Landsgemeinde* canton there is at present an executive commission of from seven to eleven members, similar to the administrative

<sup>1</sup> E. A. Freeman, “Growth of the English Constitution,” p. 2.

<sup>2</sup> Deploige, “Referendum in Switzerland,” p. 9 *et seq.*

## LANDSGEMEINDE CANTONS

Landam-  
man  
and  
executive  
com-  
mission

council of the representative cantons. The *Landamman* or president of these executive commissions has much greater prominence and power in the Landsgemeinde cantons than the corresponding official in other cantons. Indeed, so far is this the case that it may be said of the most democratic cantons of Switzerland that they are the only ones which approach the presidential form of executive organization. Nor does the fundamental democracy of these cantons prevent the election as *Landamman* of men of aristocratic family, — not, of course, in the sense that they possess or favor special privilege, but that being of ancient lineage, of substance and education, they are naturally drafted to make the sacrifice of serving in offices which are exacting as to duties and anything but highly salaried. In this way each generation of certain prominent families may be called upon to contribute an incumbent to the honorable but burdensome post of cantonal chief executive. Although the *Landamman's* term of office is only one year, it is customary for the Landsgemeinde to reelect him as long as he will consent to serve. There are a number of cases on record like that of Eduard Blumer, who has been the chief magistrate of Glarus for thirty years. The *Landamman* is not only the governor, but in a peculiar sense the father as well, of his little land.<sup>1</sup>

<sup>1</sup> H. Ryffel, "Die schweizerischen Landsgemeinden," p. 229.

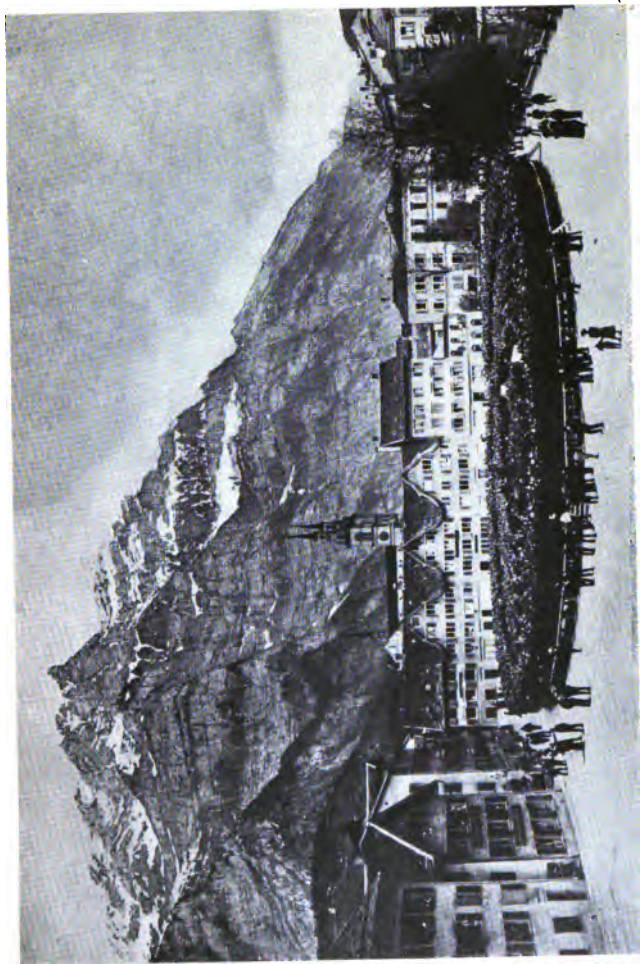
## GOVERNMENT OF SWITZERLAND

### Advisory council

Besides the small executive council, each of the democratic cantons possesses an advisory body variously known as the *Landrat*, *Kantonsrat*, or *Grosser Rat*. In spite of the similarity of names, this body must not be confused with the legislatures of the cantons which have representative institutions. These advisory councils are usually composed of the executive council, to which are added a number of representatives elected in communes or districts. Although they exercise certain minor administrative powers and may usually issue ordinances, the principal function of the advisory councils is to pass upon measures presented by citizens for the consideration of the *Landsgemeinde*. Owing to the standing of their members, any suggestions emanating from this source are certain to exert a considerable influence upon the popular assembly. From the constitutional point of view, however, it is the will of the latter which enacts the law of the canton.

### Powers of Landsgemeinden

As defined in their constitutions the powers of the *Landsgemeinden* differ from canton to canton. In general they include revision of the constitution, partial or total; enactment of ordinary legislation; taxation, debt issues, alienation of public property and franchise grants; naturalization; creation of new offices and fixing salaries thereof; and election of executive and judicial officers of the canton. While most of these powers are legislative, others are clearly



LANDSGEMEINDE AT GLARUS



## LANDSGEMEINDE CANTONS

administrative in character. The Landsgemeinden do not, however, act in a judicial capacity. In the latter respect they differ from their alleged ancestor, the folkmote of Tacitus, which condemned criminals and cowards by popular vote.

Meetings of the Landsgemeinde are held in the open air, usually in a meadow near the chief town of the canton, but sometimes in its principal public square. Two of them adjourn to neighboring churches in case of rain, but the others carry on their proceedings, often at much discomfort, regardless of the weather. The regular day of meeting is the last Sunday in April or the first in May. If business is not completed at the regular meeting, or if unusual circumstances demand it, a supplementary meeting may be called either by resolution of the Landsgemeinde itself, or of the advisory council, or upon demand of a certain number of qualified voters.<sup>1</sup>

One of the most vivid brief descriptions of a Landsgemeinde in English is the following by Professor George L. Burr of Cornell University. The canton referred to is Appenzell Exterior, which is by far the most populous of the democratic cantons.

"We were welcomed at the home of Ober-richter Sturzenegger, and given a window which looked out directly upon the great square in which the twelve thousand odd voters were

<sup>1</sup> The number is fixed at 65 qualified voters in Appenzell Exterior, at 150 in Uri, and at 1500 in Glarus.

## GOVERNMENT OF SWITZERLAND

A  
Landes-  
gemeinde  
in  
Appen-  
zell  
Exterior

closely packed. All came '*anständig gekleidet*' — as the law provides — in solemn black and with the swords of their ancestors at their sides. At the appointed hour of eleven, the *Landamman*, the six other members of the *Regierungsrat*, and the *Landweibel*, or crier, were escorted with great ceremony to the platform which stood near one end of the square. The proceedings were opened by a moment of silent prayer, and by a national anthem which was sublimely sung. Then the *Landamman* delivered an address which, judging by its reception, must have been eloquent, though at our distance I could hear only occasional sentences. Thereupon the assembly proceeded to its first order of business, — the auditing of the year's accounts. The question was upon their acceptance as correct, or the appointment of an auditing committee, and they were accepted outright by an enormous majority. Never have I seen a more curious sight than the coming up of all those white hands out of that black crowd.

"Next came the election of officers. The question was first put always upon the reëlection of the present incumbent; and in every case the reëlection was almost unanimous, — a fact which is perhaps less surprising when one remembers that the highest salary paid to any public official in Appenzell is two hundred francs a year, — the judges of its Supreme Court get six francs a day, but only during the session. As Judge

## LANDSGEMEINDE CANTONS

Sturzenegger laughingly said, it is the way the canton manages to lay a tax on brains, — for every man elected is bound to accept or move out.

“Funnily enough, only over the unimportant but noisy office of *Landweibel* was there a sharp contest. As the chief qualification is a stentorian voice, each of the candidates was required to recommend himself to the voters in a short speech, and you can think of nothing more comical than this competition; for, whether the aspirant piped or roared at the outset, he always ended in a squeak.

“The manner of taking the votes is singularly fair to minorities. We had occasion to note this, especially in the filling of the two vacancies in the *Regierungsrat*. A mass of nominations were made, and taken down in writing. Then the question was put separately on the name of each candidate. From these the two who had received the fewest votes were now eliminated, and the question taken on each of the remainder, and so on until only two were left, when the decision was, of course, apparent, though more than once the vote had to be taken over and over before the *Landamman* would trust his eyes to declare it. On the announcement of the final vote, the position of the successful candidate in the crowd was shown by the thrusting up of all the swords in his vicinity, and the band sallied forth to escort him to the platform. For the second



## GOVERNMENT OF SWITZERLAND

vacancy the question was then put again, as before, upon all the candidates but the elected one.

"After the elections came the legislation. Only three bills were submitted. The first, the repeal of a practically obsolete law for the guarantee of cattle, met with no opposition. The second, the proposed forcible closing of the '*Wirtschaften*' at twelve at night, was rejected by a considerable majority. The third, providing that even resident peddlers should pay a license, and that a license . . . should also be required of the keepers of '*Wirtschaften*' (a bill, that is, to abridge the right of every citizen to peddle or sell wine as he pleases), was in both its clauses voted down overwhelmingly. The defeat of these measures was explained to us, and I think justly, as proceeding far less from any opposition to the ends they sought than from suspicion and impatience at their encroachment upon personal liberty.

"The business being ended, there remained only the oath. It was read solemnly by the venerable clerk, and taken first by the *Landamman*. Then, with bared heads, and three fingers lifted high in air, that army of freemen listened to its terrible clauses of vow and imprecation, unchanged from the Middle Ages, and rumbled with one voice its repetition of them. No man dared be silent in that throng. Then came another anthem, and the *Landsgemeinde* was over. It had lasted three hours.

## LANDSGEMEINDE CANTONS

"Never have I seen such perfect order, such perfect quiet, — not even in a body a tenth its size. Yet there were no police, not so much as a constable. Once or twice, after the most exciting votes, a slight murmur passed through the host, but a cry or two of 'Quiet' (*Rubig!*), as the business began again, brought a hush as of death. The only break in the gravity of the proceedings was during the comical scene of the *Landweibel* competition. Did you ever hear twelve thousand men smile? It was like the ripple, dash, and vanish of a wind-blown thunder shower."<sup>1</sup>

Other Landsgemeinden are accompanied by greater pomp and ceremonial. Particularly is this the case in canton Uri, where, after attending divine worship, a procession forms in the market square of Altdorf and marches to the place of meeting in the old meadow at Bötzingen.

Pomp  
and  
ceremony  
in Uri

"Over their heads floats the banner, the bull's head of Uri, the ensign which led men to victory on the fields of Sempach and Morgarten. And before them all, on the shoulders of men clad in a garb of ages past, are borne the famous horns, the spoils of the wild bull of ancient days, the very horns whose blast struck such dread into the fearless heart of Charles of Burgundy. Then, with their lictors before them, come the magistrates of the commonwealth on horseback, the

<sup>1</sup> From a letter to Andrew D. White, published in the "Nation," Vol. 46, p. 446 (1888).

## GOVERNMENT OF SWITZERLAND

chief magistrate, the *Landamman*, with his sword by his side. The people follow the chiefs whom they have chosen to the place of meeting, a circle in a green meadow, with a pine forest rising above their heads and a mighty spur of the mountain range facing them on the other side of the valley. The multitude of freemen take their seats around the chief ruler of the commonwealth, whose term of office comes that day to an end. The Assembly opens; a short space is first given to prayer, silent prayer offered up by each man in the temple of God's own rearing. Then comes the business of the day."<sup>1</sup>

Religious  
spirit  
of the  
Landsgemeinde

There is a strongly marked religious spirit in every Landsgemeinde. It is a legislative assembly, to be sure, but it is also a divine service in which the whole people participates. The impressive spiritual and educational effect of such meetings is deeply realized not only by qualified voters but also by the younger men, women, and children of the canton, who stand just outside the circle in which the Landsgemeinde meets. By virtue of a beautiful old custom, the school-boys of Glarus are especially privileged to occupy a place immediately surrounding the presiding officials in the center of the ring.

While the Landsgemeinde is the supreme legislative authority of the canton, its procedure must be in accordance with certain constitutional provisions. Thus in two cantons, — Glarus and

<sup>1</sup> Freeman, *op. cit.*, p. 3.

## LANDSGEMEINDE CANTONS

Appenzell Interior, — any one qualified voter can move an amendment to the constitution, but in the other cantons a motion to this effect requires the support of a number of voters, viz., in Appenzell Exterior a number equal to the membership of the Cantonal Council, i.e., 65; in Uri, 50; in Lower Unterwalden, 400; and in Upper Unterwalden, 500. Except in the two latter these requirements are far lower than those provided for the constitutional initiative in the representative cantons of Switzerland.

In all the democratic cantons, with one exception, a single voter may initiate ordinary legislation. Since 1876, Appenzell Exterior, the largest of them, has required 65 signatures for this action also.

Methods  
of pro-  
posing  
measures

All Landsgemeinde cantons except Appenzell Interior<sup>1</sup> require that motions must be submitted in written form, accompanied by argument, to the advisory council a fixed time before the annual meeting of the people. It is the duty of the advisory council to pass upon such motions, and to recommend their acceptance, amendment, or rejection. In Glarus, for example, if ten members of the *Landrat* (about one seventh of the total number of councilors) favor a motion, it must be reported as worthy of consideration, together with the comment of the council, four weeks in advance of the meeting of the Lands-

<sup>1</sup> In this canton motions may be presented orally to the council.

## GOVERNMENT OF SWITZERLAND

gemeinde. All measures which fail to win this measure of support in the advisory council are reported without comment as unworthy of consideration under a special rubric, which in the expressive slang of the canton is called the "*Beiwagen*," or extra coach. Motions reported favorably by the advisory council become law if voted by a majority of the Landsgemeinde. By a special resolution a motion may be taken out of the *Beiwagen* and placed upon the calendar for consideration a year later.

### Discus- sion of measures

In Appenzell Exterior the large attendance at the Landsgemeinde has compelled the adoption of an amendment to the constitution prohibiting discussion in the case of motions, although not in the case of elections. As a consequence the voter is obliged to make up his mind largely upon the basis of the printed memorial containing the opinion on proposed legislation of the advisory council.<sup>1</sup> Only in Uri and Glarus may amendments and additions be offered "from the ring"; that is, at the meeting of the Landsgemeinde itself. Motions regulating procedure, such as referring a bill back to the advisory council for further report or postponing a vote on it, are permissible in four cantons.

With the exception of Appenzell Exterior noted above, all the democratic cantons hold to the

<sup>1</sup> A similar document is prepared by the advisory council of Glarus. In the other five cantons no such "publicity pamphlet" is issued.

## LANDSGEMEINDE CANTONS

old freedom of debate in the Landsgemeinde. In Uri the law requests each orator to be as brief as possible, and allows a maximum of twenty minutes. Although modern Landsgemeinden are extremely well behaved as a rule, long-winded speakers are sometimes interrupted by cries of "*Abstimme!*" (Vote), "*Schluss mache!*" (Make an end), or "*Es isch jetzt gnug, mer wend Firabig*" (That's enough, we want to shut up shop).

Originally the Landsgemeinden were assemblages of all male citizens "*in Ebr und Webr*"; that is, possessing political rights and military capacity. There was a time when fighting ability was assumed to begin with the fifteenth year in three cantons, and with the seventeenth in three others. Subsequently the voting age was raised, and it now stands at the completed twentieth year in all the democratic cantons except Nidwalden, where it remains fixed at the completed eighteenth year.

The number of persons qualified to participate in Landsgemeinden ranges from 2961 in Appenzell Interior to 12,694 in Appenzell Exterior.<sup>1</sup> Ordinarily the actual attendance can be only estimated. It seems to vary considerably from

Participation

<sup>1</sup> Figures from Ryffel, *op. cit.*, p. 278, for the year 1900. For the other four democratic cantons the number of qualified persons is as follows: Lower Unterwalden, 3090; Upper Unterwalden, 3953; Uri, 4823; Glarus, 8245. An actual count showed 1722 present at the Landsgemeinde of Uri in 1901, and 2355 at the Landsgemeinde of Lower Unterwalden in 1895.

## GOVERNMENT OF SWITZERLAND

meeting to meeting. The best figures available indicate an attendance of 36 per cent of those qualified in Uri; from 25 to 38 per cent in Upper Unterwalden; 79 per cent in Lower Unterwalden; 48 per cent in Glarus; 63 to 79 per cent in Appenzell Exterior; and 77 per cent in Appenzell Interior. All six of the democratic cantons declare in their constitutions that participation in the Landsgemeinde is the duty of every qualified citizen. Only the two Appenzells, however, have laws penalizing non-attendance by small fines of five or ten francs, except when valid excuses can be given. The clause on this subject in the constitutions of each of the other four cantons is, therefore, a clear case of *lex imperfecta*.

### **Main- tenance of order**

A number of police regulations provide for the maintenance of order at the Landsgemeinden. Thus in Nidwalden any one who becomes intoxicated before the meeting is subject to a fine of twenty francs, while the innkeeper or other person who supplied the liquor may be mulcted in the same sum. In Glarus and Uri all hawking of wares in the immediate neighborhood of the ring is prohibited. Any violent disturbance of the meeting may be severely punished. Voting by unqualified persons is subject to fines of from five to three hundred francs, to which imprisonment may be added in flagrant cases. Other measures are needed to suppress this evil. It has been suggested that all entrances to the ring should be guarded and admission granted only

## LANDSGEMEINDE CANTONS

to persons wearing badges issued beforehand to qualified voters. Bribery, intimidation, misrepresentation, and other corrupt practices are subject to penalties similar to those inflicted in case of illegal voting.

In general, however, the good order and purity of the Landsgemeinde are maintained not by force and penal threat but by the power of ancient tradition, the solemnity of the occasion, and the awe-inspiring character of the surroundings. There is a real effort to live up to the exalted ideals expressed in the constitution of Uri; namely, that "the sole guiding principle of the Landsgemeinde shall be justice and the welfare of the fatherland, not willfulness nor the power of the stronger. In casting a vote at the Landsgemeinde the individual and the people are responsible only to God and conscience" (Art. 50). Impressive, too, are the oaths taken Oaths both by the newly elected officials and by the whole assembly. Thus in Appenzell Exterior the people swear "to promote the welfare and honor of the country and to turn aside harm from it, to protect its rights and liberties to the best of our power and to defend them with goods and blood should need arise; to obey authority according to the laws; to maintain justice and order; and to promote the welfare of all to the best of our powers." And at the end the response is chorused by the mighty crowd: "I have well understood that which was read to me; to it I

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## GOVERNMENT OF SWITZERLAND

will hold true and firm, loyally and without any deceit, so truly as I wish and pray that God may help me."

The  
Landsgemeinde a  
flourishing  
institution

It has been customary to explain the persistence of the Landsgemeinden as due to the small size and population, the primitive agricultural economy and homogeneous social conditions of the cantons in which they prevail. All these considerations are subject to qualification. On the average the pure democracies are of smaller area than the other cantons of Switzerland. The greatest dimension of Uri — the largest of the six — is about thirty-five miles, and a majority of its voters have to travel less than ten or twelve miles to reach Altdorf. Moreover, improvement of roads and better railroad service are making it constantly easier for voters to reach the various Landsgemeinden.<sup>1</sup> Nevertheless, it is true that Uri is larger than nine, Glarus and Upper Unterwalden larger than five, of their sister commonwealths with representative institutions.

In the more ancient cantons — Uri, the two Unterwaldens, and Appenzell Interior — agriculture and cattle raising are the predominant industries, and social conditions are still fairly

<sup>1</sup> Nevertheless, peasants living at greater distances complain that they are at a disadvantage as compared with those living in or near the capital. It has been suggested that this objection might be met by holding the Landsgemeinde at various places in succession. In one canton — Appenzell Exterior — the people meet at Trogen in even-numbered years and at Hundwyl in odd-numbered ones.

## LANDSGEMEINDE CANTONS

homogeneous. Great harmony prevails also in religious affairs, as their population is overwhelmingly Catholic. During the latter part of the nineteenth century, however, Appenzell Exterior and Glarus — which, by the way, are largely Protestant — succeeded in developing an active industrial life. Within the ring at the Landsgemeinden of these two cantons, herdsmen, shepherds, peasants, manufacturers, factory employees, artisans, merchants, and members of the learned professions meet on terms of perfect equality. Nor do their ancient democratic institutions show the least sign of breaking down under this new economic development.

It is true that the number of laws enacted each year by the Landsgemeinde cantons is small, but this is also true of most of the representative cantons of the same size. It is emphatically not the case, however, that the quality of pure democratic legislation is reactionary. A close observer rates the legislation of Glarus and Appenzell Exterior as taking high rank among the progressive cantons of Switzerland. Upper Unterwalden is a close second to these two, while Uri, Lower Unterwalden, and Appenzell Interior have made many advances in the last two or three decades.<sup>1</sup>

Quantity  
and  
Quality  
of  
legis-  
lation

The Landsgemeinde, then, has given abundant evidence of its right to existence. At an earlier date it furnished part of the inspiration that

<sup>1</sup> Ryffel, *op. cit.*, p. 328.

## GOVERNMENT OF SWITZERLAND

found expression in the democratic doctrines of Rousseau, and thus it aided in the world-wide spread of that gospel. Later it served, together with other precedents, to suggest to the Swiss the adoption of the initiative and referendum. For a time the success of these two institutions gave rise to the opinion that the older forms of pure democracy might ultimately abdicate in their favor. However, in the actual physical presence of the sovereign at one time and place the Landsgemeinde possesses a real advantage over the initiative and referendum. As Welti said in 1872, the Landsgemeinde "is a living institution with which the paper referendum is not to be compared." On the same subject Jacob Dubs wrote:

"Here the unity of the country is physically represented, — administration, council, and people, by a single circle spanned about and by a single thought upborne. In this higher, visible unity all political and social antagonisms are dissolved. . . . The thought of community, of the solidarity of all the interests of the people, of brotherhood under the same fatherland, win place and power in the assembled multitude. . . . Orator and hearer lift each other to higher planes. There are moments when a silent awe takes possession of the crowd and the feeling wakes in them that they stand upon holy ground; that God is near them."

At the present time it is generally conceded  
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## LANDSGEMEINDE CANTONS

that the Landsgemeinde will be perpetuated indefinitely in the six democratic cantons of Switzerland. As the "most natural, most vital, and most beautiful embodiment of democracy" it deserves to endure so long as the simplicity and nobility of that ideal have power to influence the world.

The  
Landsgemeinde  
certain  
to endure

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- ADAMS, F. O., and CUNNINGHAM, C. D. "The Swiss Confederation," pp. 117 ff.  
FREEMAN, E. A. "Growth of the English Constitution," Ch. I, pp. 1-10.  
LLOYD, H. D. "A Sovereign People," Ch. IV (The Landsgemeinde or State Commune).  
VINCENT, J. M. "Government in Switzerland," pp. 54 ff.

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**A**T the end of each chapter in the preceding text a brief list of the more easily accessible English references is presented. Unless some special circumstance makes it desirable, these titles will not be repeated in the present bibliography. For the reader's convenience the following lists are given the same headings as the chapters of the book.

There is no systematic bibliography of recent date in English which covers the whole field of Swiss government and politics. In J. M. Vincent's "Government in Switzerland," New York, 1900, a very valuable list of selected references with comment is presented, dealing principally with constitutional history, but also containing sections on topography, statistics, laws and official publications, and special questions. Following his admirable article on Switzerland in the *Encyclopædia Britannica*, Vol. 26, Cambridge, 1911, W. A. B. Coolidge gives references covering a wide range of topics, among which are: "History"; "Economical: Trade and Commerce"; and "The Constitution of 1874." There is a much briefer list of references on Switzerland in the *New International Encyclopedia*, Vol. 21, New York, 1916. Many books dealing with

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special aspects of Swiss government and politics contain reference lists which, so far as possible, will be noted in the following pages.

Since 1892, there has been issued in Bern, in parts each complete in itself, an invaluable "Bibliographie des schweizerischen Landeskunde," the purpose of which is to list all books relating in any way to Switzerland.

### I. PHYSICAL BASIS OF THE SWISS FEDERATION

#### *Land, People, Industrial and Social Conditions*

There is a never ceasing flow from English and American presses of descriptive books on Switzerland. Most of these are devoted largely to the superficial aspects of travel, sports, or health-seeking, and give little attention to the life of the Swiss people. The most satisfactory treatment of the latter topic in English is to be found in A. T. Story's "Swiss Life in Town and Country," New York, 1902. F. Webb's "Switzerland of the Swiss," New York, 1913, contains a great mass of interesting materials rather hastily put together. "Switzerland" by Frank Fox, London, 1914, is a cleverly written, beautifully illustrated book of this type. "Our Life in the Swiss Highlands" by John Addington Symonds, London, 1907, is the work of a literary master who understood and sympathized deeply with the common lot of his Swiss friends and

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neighbors. In "A Little Swiss Sojourn," New York, 1892, an American master, William Dean Howells, presents with all the sharp compression of a cameo the life of the people in one corner of Canton Vaud.

An admirable study of Switzerland from the economic and social point of view is to be found in Pierre Clerget's "La Suisse au XXe siècle," Paris, 1912. A. Dauzat's "La Suisse moderne," Paris, 1910, reveals careful observation and fine psychology in the treatment of such topics as the country and its aspects, the Swiss soul, religions and languages. Under the title "La Suisse au XIXe siècle," Lausanne, 3 vols., 1901, P. Seippel, editor, presents a number of admirable papers by recognized authorities on Swiss economic conditions, public law, schools, army, religious conditions, and other topics. Other useful books in this field are H. Gutjahr's "La Suisse intime," Paris, 1904; and J. C. Heer's "Die Schweiz," Bielefeld and Leipsic, 1902. A popular but comprehensive and well-illustrated book is "Die Schweiz," edited by H. Brunner, Neuchâtel, 1909. It contains a great mass of materials — demographic, political, economic, and historical. Dr. Ernest Lerch's "Vaterlandskunde der Schweiz," Zürich, 1912, is interesting as a typical Swiss grammar-school manual. It is divided into three parts — geographical, historical, and political. Short of actual residence among and contact with the Swiss people, there

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is no better method of approach to their national psychology than through the novels of Édouard Rod and Gottfried Keller.

The language question in Switzerland is exhaustively treated in J. Zimmerli's "Die deutsch-französische Sprachgrenze in der Schweiz," Geneva and Basel, 3 vols., 1891-99. René Henry is the author of a later pamphlet on the same subject, entitled "La Suisse et la Question des Langues," Bern, 1907.

The best map of Switzerland is the Topographischer Atlas, better known as the Siegfried Atlas, published by the Federal Staff Office. A list of good maps on a smaller scale may be found in Karl Baedeker's "Switzerland," p. xxix, Leipsic, 25th ed., 1913, which is the standard among guidebooks. Charles Knapp's "Dictionnaire géographique de la Suisse," Neuchâtel, 1902-06, is a full and valuable work of reference.

On economic conditions in Switzerland valuable bibliographies by J. Landmann, "Disposition, Literaturangaben und Tabellenmaterial zur Vorlesung: die schweizerische Volkswirtschaft," and by F. Scheurer, "De récents essais sur l'industrie suisse; compte rendu bibliographique," may be found in Nos. 1 and 3 respectively of the "Zeitschrift für schweizerische Statistik und Volkswirtschaft."

By far the most valuable single work of reference on Swiss economic conditions, and on social politics and administration as well, is Dr.



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N. Reichesberg's "Handwörterbuch der schweizerischen Volkswirtschaft, Sozialpolitik und Verwaltung," Bern, 3 vols., 1903-11. Among special works may be mentioned T. Geering and Hotz's "Économie politique de la Suisse," Zürich, 1911, also in German with a detailed bibliography; E. Hoffmann's "Die Schweiz als Industriestaat," Zürich, 1902; A. Le Cointe's "Inventaire des institutions économiques et sociales de la Suisse à la fin du XIXe siècle," Geneva, 1900; A. Pflughart's "Die schweizerische Uhrenindustrie," Leipsic, 1908; P. H. Schmidt's "Die schweizerischen Industrie im internationalen Konkurrenzkampf," Zürich, 1915; and H. Wartmann's "Handel und Industrie der Schweiz im 19. Jahrhundert," Bern, 1902. Current developments in this field may best be followed in the "Bericht über Handel und Industrie der Schweiz," published annually at Zürich by the Vorort des schweizerischen Handel- und Industrie Verein. The principal statistical sources are the "Ergebnisse der eidgenössischen Volkszählung vom 1. Dezember, 1910"; and the "Statistisches Jahrbuch der Schweiz," Bern, which has appeared annually since 1891. The "Zeitschrift für schweizerische Statistik," published six times a year at Bern since 1865, and the "Zeitschrift für schweizerische Statistik und Volkswirtschaft," Bern, quarterly, are the most useful periodicals dealing with Swiss statistics and economic conditions.

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### II. DEVELOPMENT OF THE SWISS FEDERATION

For American readers the two most useful brief histories of Switzerland are Dr. Karl Dändliker's "Short History of Switzerland," London, 1899; and William D. McCrackan's "Rise of the Swiss Republic," New York, 1901, with a twelve-page list of references. F. Grenfell Baker's "Model Republic, A History of the Rise and Progress of the Swiss People," London, 1895; and L. Hug and R. Stead's "The Story of Switzerland," New York, 1895, are written in somewhat more popular style, the latter containing many well-chosen illustrations. Part II of W. A. B. Coolidge's article in the *Encyclopædia Britannica* contains a very valuable outline of Swiss history, with excellent bibliographical references. J. Sowerby's "The Forest Cantons," London, 1892, contains much of interest regarding the early history of Uri, Schwyz, and Unterwalden. On special periods J. M. Vincent's "Switzerland at the Beginning of the Sixteenth Century," Baltimore, 1904, may be consulted; also the following contributions to the *Cambridge Modern History*, all of which are admirable: J. P. Whitney, "The Helvetic Reformation," and A. M. Fairbairn, "Calvin and the Reformed Church," Vol. II, Chs. X and XI; J. J. Schollenberger, "Switzerland from the Treaty of Aarau (1712) to the French Revolution," Vol. VI, Ch.

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XVII; and W. Oechsli, "The Achievement of Swiss Federal Unity," Vol. XI, Ch. VIII.

Containing all the recesses of the Diet from 1245 to 1848, the great "Amtliche Sammlung der älteren eidgenössischen Abschiede," which was published officially in thirty-two volumes from 1858 to 1905, is invaluable. A compendious and important source book for documents illustrating Swiss political and constitutional history from the origins to modern times is W. Oechsli's "Quellenbuch zur Schweizergeschichte," Zürich, 1901. All Swiss chroniclers and historians of importance are reliably characterized by Georg von Wyss in his "Geschichte der Historiographie in der Schweiz," Zürich, 1895. Hans Barth's "Bibliographie der Schweizergeschichte," Basel, 2 vols., 1914, and the "Repertorium," Basel, 2 vols., 1892-1906, which lists historical articles in Swiss periodicals from 1812 to 1900, are useful bibliographical works.

Brief sketches of the works of such earlier writers on Swiss history as J. v. Müller, R. Glutz-Blotzheim, J. J. Hottinger, L. Vulliemin, and Ch. Monnard, may be found in Vincent. Among more recent authorities very high rank must be assigned to Johannes Dierauer's well-written and judicious "Geschichte der schweizerischen Eidgenossenschaft," which in four volumes covers the whole range of Swiss history from Roman times to the year 1798. This monumental work is also available in French, translated

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by Aug. Reymond, under the title "Histoire de la Confédération suisse," Lausanne and Paris, 1911-14. Both the German and the French editions contain exhaustive critical notes upon the sources. Conceived on the same large scale and ably executed is Karl Dändliker's "Geschichte der Schweiz," Zürich, 3 vols., 1893, covering Swiss history from the time of the Lake Dwellers to 1885. Two extended volumes by Dr. J. Schollenberger, "Geschichte der schweizerischen Politik," Frauenfeld, 1906-08, deal with Swiss political history exclusively from the origin of Swiss independence to the revision of the federal constitution in 1874.

To the foregoing works of more general character may be added a number of historical books and monographs in German and French dealing with particular periods, as follows: E. Gagliardi, "Hohepunkt und Verfall der schweizerischen Grossmacht im 16ten Jahrhundert," Zürich, 1907; E. de Bude, "Les Bonapartes et la Suisse, 1797-1815," Geneva, 1905; E. Guillon, "Napoleon et la Suisse, 1803-15," Paris, 1910; G. Steiner, "Napoleon I. Politik und Diplomatie in der Schweiz während der Gesandtschaftszeit des Grafen August de Talleyrand," Zürich, 1907; W. Gisi, "Die helvetische Verfassung von 1798," Bern, 1872; J. Strickler, "Aktensammlung aus der Zeit der helvetischen Republik," Bern, 1886-1903; B. van Muyden, "La Suisse sous le Pacte de 1815," Lausanne, 1890; Baumgartner,

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On the periods following the adoption of the constitutions of 1848 and 1874, J. Schollenberger has written two volumes: "Die Schweiz seit 1848, ein staatsmänn. und diplomatisches Handbuch," Berlin, 1908, and "Die schweizerische Eidgenossenschaft von 1874 bis auf die Gegenwart," Berlin, 1910. For the nineteenth century as a whole W. Oechsli's "Geschichte der Schweiz im neunzehnten Jahrhundert," Leipsic, 1903, and Th. Curti's book of the same title, Neuchâtel, 2d ed., 1904, are valuable.

### III. THE SWISS FEDERAL CONSTITUTION

#### *Constitutional History, Constitutional Law*

Best and latest among English translations of the Swiss federal constitution is that of Professor Walter E. Dodd, published with a brief historical note and bibliography in his "Modern Constitutions," Vol. II, pp. 253-290, Chicago, 1909. English translations may also be found in the appendix of J. M. Vincent's book cited below; by Professor E. J. James in No. 8, University of Pennsylvania Publications in Political Economy and Public Law, Philadelphia, 1890; and by Professor A. B. Hart in No. 18 of the Old South Leaflets, Boston, 1890.

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Among books in English dealing with Swiss governmental institutions generally the most valuable is J. M. Vincent's "Government in Switzerland," New York, 1900. It devotes as much space to cantonal as to federal government. "The Swiss Confederation," by F. O. Adams and C. D. Cunningham, London, 1889, is devoted largely to the federal government and is still worth consulting. "The Federal Government of Switzerland," Oakland, California, 1889, by Professor Bernard Moses, is an interesting comparative study of the Swiss constitution. Boyd Winchester, former minister of the United States at Bern, embodied many observations made in that capacity in his "The Swiss Republic," Philadelphia, 1891. Valuable chapters or sections on Swiss government are contained in the following general works: "Comparative Free Government," New York, 1915, by Jesse Macy and J. W. Gannaway; "The Governments of Europe," New York, 1913, by F. A. Ogg; "Governments and Parties in Continental Europe," Vol. II, Boston, 1896, by A. Lawrence Lowell, with the Swiss constitution in French; and "The State," Boston, 1899, by Woodrow Wilson.

An official collection of Swiss federal and cantonal constitutional documents in German, French, and Italian was published in Bern in 1891, with supplements one to nine, 1892-1903, under the title "Sammlung enthaltend die

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Bundesverfassung und die in Kraft bestehenden Kantonsverfassungen." In 1909, the Chancellor began the publication of a new edition of this collection. Constitutional texts may also be found in the French collection of F. R. Dareste, Paris, 3d ed., 1910; and the German collection of Posener, Charlottenburg, 1909. Kaiser and Strickler's "Geschichte und Texte der Bundesverfassungen der schweizerischen Eidgenossenschaft," Bern, 1901, is a valuable compendium covering the period from the Helvetic revolution to the present time.

Probably the best constitutional history of Switzerland is C. Hilty's "Die Bundesverfassungen der schweizerischen Eidgenossenschaft," Bern, 1891, also published in French at Neuchâtel, the same year. Readers should consult the works of Vincent and Dodd cited above, for valuable notes upon Blüntschli, Ullmer, and other earlier writers on Swiss constitutional history.

On Swiss constitutional origins and development Fritz Fleiner's "Entstehung und Wandlung moderner Staatstheorien in der Schweiz," Zürich, 1916, is extremely valuable. Charles Borgeaud's "Établissement et Révision des Constitutions en Amérique et en Europe," Paris, 1892; English translation by C. D. Hazen, New York, 1895, is probably more widely known and more highly esteemed among American students than any other book in this field. It contains important chapters on Swiss constitutional origins and

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methods of amendment, and draws many suggestive comparisons between American and Swiss political methods. For those interested in comparative studies, Rüttimann's three-volume work entitled "Das nordamerikanische Bundesstaatsrecht verglichen mit den politischen Einrichtungen der Schweiz," Zürich, 1867-76, may still be consulted with profit. A recent pamphlet by W. E. Rappard, "Notre grande république sœur," Geneva, 1916, draws many instructive comparisons, economic and social as well as political, between the two republics.

Among commentaries on the Swiss constitution the present writer has found W. Burckhardt's monumental "Kommentar der schweizerischen Bundesverfassung," Bern, 2d ed., 1914, the most valuable. It takes up the constitution of 1874 article by article, expounding each with a great wealth of historical and legal material. J. Schollenberger's "Bundesverfassung der schweizerischen Eidgenossenschaft, Kommentar mit Einleitung," Berlin, 1905, is also an authoritative work in which each article of the constitution is separately expounded. Another valuable general treatise by the same author is entitled "Das Bundesstaatsrecht der Schweiz, Geschichte und System," Berlin, 1905. An earlier three-volume work by J. J. Blumer and J. Morel, "Handbuch des schweizerischen Bundesstaatsrechts," published originally in the late seventies and eighties, enjoys high repute. The third volume of Flan-



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drin's "Institutions politiques de l'Europe contemporaine," Paris, 1901, is devoted in part to a discussion of the Swiss constitution, government, legislation, local administration, and justice. Other frequently cited works in this field are A. Affolter's "Grundzüge des schweizerischen Staatsrechts," Zürich, 1905, with supplement on individual rights published in 1911; and B. Bertoni and A. O. Olivetti's "Le Istituzioni svizzere nel diritto pubblico e privato," Turin, 1903.

Under the title "Schweizerisches Bundesrecht," Bern, 2d ed., 1903-04, L. R. von Salis published five volumes of decisions by the Bundesrat and Bundesversammlung on matters of public and administrative law; French edition by Eugène Borel. R. E. Ullmer's "Staatsrechtliche Praxis," Zürich, 2 vols., 1862-66, is a work of similar character covering the earlier period from 1848 to 1863, also translated into French by Eugène Borel. For older works in this field by J. Dubs, S. Kaiser, A. von Orelli, and others, the bibliographies of Vincent and Dodd may be consulted. A very important article by F. Fleiner, "Die Fortbildung der schweizerischen Bundesverfassung seit dem Jahre 1874," in the "Jahrbuch des öffentlichen Rechts der Gegenwart," Vol. I, pp. 392-413, 1907, discusses the development of the Swiss constitution since 1874.

Swiss students are fortunate in the possession of a large number of excellent monographs

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on political topics. In the field of public law the following are worthy of special mention: W. Gnehm, "Interventionsrecht," Zürich, 1912; Hiestand, "Rechtsquellen im eidgenössischen Staatsrecht," Zürich, 1891; L. Jenny, "Verwaltungsrechtspflege," Glarus, 1910; O. Lauber, "Bundesstaatsbegriff," 1910; O. Müller, "Verwaltungsgerichtsbarkeit," Männedorf, 1910; Sieber, "Expropriation," Zürich, 1889; Veith, "Der rechtliche Einfluss der Kantone auf die Bundesgewalt," Schaffhausen, 1902, with a six-page bibliography; and J. Roguin, "Conflits des lois suisses," Lausanne, 1891.

Among the many annuals published in Switzerland students of politics will find the "Politisches Jahrbuch der schweizerischen Eidgenossenschaft" most valuable. It was founded in 1886 by Dr. C. Hilty, and is being continued by Dr. W. Burckhardt. The "Politisches Jahrbuch" publishes each year a large number of timely papers by recognized authorities on Swiss public questions, together with an extended report on Swiss foreign and domestic affairs, the latter including such topics as constitutional reform, civil and criminal law, the military system, transportation, economic and financial conditions, agriculture, and social politics. It also reprints a large number of official documents of current importance.

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### IV. THE FEDERAL LEGISLATURE

Biographical details and portraits of members of the Federal Assembly, also of the Federal Council, may be found in the "Jahrbuch der eidgenössischen Räte," Bern, 1916, which corresponds in a general way to our Congressional Directory. T. Curti's "Im Bundesratshaus," Zürich, 1894, contains some clever "pen sketches," dryly humorous in tone, devoted to parliamentary and administrative reform. The "Études et portraits politiques," Geneva, 1895, by N. Droz, may also be consulted with profit by students of Swiss legislation.

The relation of the Swiss legislative and executive branches is discussed in D. K. Bosshard's monograph entitled "Das Verhältnis zwischen Bundesversammlung und Bundesrat: Eine Studie über das Prinzip der Gewaltentrennung im schweizerischen Bundesstaatsrecht," Zürich, 1909. Th. Guhl's "Bundesgesetz, Bundesbeschluss und Verordnung," Basel, 1908, is an able legal discussion of the various forms in which the Swiss legislative will is expressed. As the referendum finds application to a part of these forms only, Guhl's monograph is of great practical importance from that point of view as well. General works quoted under the preceding heading (III. The Swiss Federal Constitution) contain much important material on the federal legislature.

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On elections to legislative office the following are of importance: E. Blocher, "Entwicklung des allgemeinen und gleichen Wahlrechts in der neuen Eidgenossenschaft," *Zeitschrift für schweizerisches Recht*, 1906; and the work by Duttweiler referred to under Section XVI of this bibliography.

The laws, decrees, etc., of the Swiss federation are published annually at Bern, under the title "Amtliche Sammlung der Bundesgesetze und Verordnungen der schweizerischen Eidgenossenschaft." The latest issue, that for the year 1916, forms Vol. XXXII of the new series of this collection. Second in importance only to the "Amtliche Sammlung" is the "Bundesblatt der schweizerischen Eidgenossenschaft," which runs to several bulky volumes annually. It contains the announcements, contracts, reports, circular letters, etc., of the federal authorities. A collection made by P. Wolf, "Die schweizerische Bundesgesetzgebung nach Materien geordnet; Sammlung der Gesetze, Beschlüsse, Verordnungen, und Staatsverträge der schweizerischen Eidgenossenschaft, sowie der Konkordate," Basel, 2d ed., 1905, is of value for legislation, resolutions, decrees, and treaties prior to that date, all logically arranged and thoroughly indexed.

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### V. FEDERAL GOVERNMENT BY COMMISSION: THE SWISS EXECUTIVE

On this topic the most valuable historical work is J. Dürsteler's "Organisation der Executiv der schweizerischen Eidgenossenschaft seit 1798," Aarau, 1912. It contains a ten-page list of sources and references to literature.

The most elaborate recent study of the election, organization, and functions of the Swiss executive both in the federation and in the cantons is C. Lempérière's "Pouvoir exécutif en Suisse," Paris, 1911. A seven-page bibliography of the subject, especially valuable for French sources, is presented. The well-known general work by L. Dupriez, "Les ministres dans les principaux pays d'Europe et d'Amérique," Paris, 1893, may still be consulted with profit regarding the rôle of ministers in Switzerland. H. Escher's "Bundesbeamtenrecht," Zürich, 1903, is valuable on the law relating to federal officials. Administrative reform is discussed among other topics in Th. Curti's "Die schweizerischen Volksrechte, 1848-1900," Bern, 1900; and also in his earlier work, "Im Bundesratshaus," referred to under IV above. The office of the Swiss president is discussed comparatively in a monograph by Krusch entitled "Die rechtliche Stellung des Präsidenten der Republik in Frankreich, den Vereinigten Staaten und der Schweiz," Erlangen, 1907.

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A complete list of officials and employees in every branch of the Swiss government is published annually at Bern under the title, "Staatskalender der schweizerischen Eidgenossenschaft."

### VI. FEDERAL LEGISLATION: INITIATIVE AND REFERENDUM

A translation of S. Deploige's "The Referendum in Switzerland" by C. P. Trevelyan, London, 1898, is the most extended work in English on this topic, although now, of course, it is somewhat out of date. The volume contains a seven-page list of references.

On the history of the Swiss referendum the leading authority is Th. Curti, "Le referendum; histoire de la législation populaire en Suisse," Paris, 1905. A very useful pamphlet by the same author, "Resultate des schweizerischen Referendums," Bern, 2d ed., 1911, presents the results of the referendum in communes, cantons, and federation down to the date of publication. Another valuable collection of data with a number of conspectuses and statistical tables may be found in H. Stüssi, "Referendum und Initiative in den Schweizerkantonen," Zürich, 1893. An admirable detailed discussion of the extension of the initiative to ordinary federal legislation is presented by E. Klaus, "Frage der Volksinitiative," Zürich, 1906.

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### VII. THE FEDERAL JUDICIAL SYSTEM

Decisions of the Swiss federal court may be found in the compendium by Salis noted under III above. On the court itself René Rauline, "Étude sur le tribunal fédéral suisse," Paris, 1904, may be consulted with profit. Appeals in public law cases are discussed by C. Borgeaud, "Étude sur le recours de droit publique au Tribunal fédéral," 1904.

An English translation of the Swiss civil code of December 10, 1907, by Robert P. Schick, was published by the Comparative Law Bureau of the American Bar Association in 1915. Rossel's "Codification du Droit civil," 1907, is also of value on this subject.

On Swiss criminal law the following are of importance: Kronauer, "Kompendium des Bundesstrafrechts," Zürich, 1912; J. Langhard, "Das schweizerische Auslieferungsrecht," Bern, 1910; and Bader, "Politische Verbrechen,"

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Zürich, 1900. In this field the following Swiss periodicals are useful: the "Schweizerische Zeitschrift für Strafrecht"; the "Zeitschrift für schweizerisches Recht"; and the "Zeitschrift für schweizerische Gesetzgebung und Rechtspflege."

### VIII. SWISS FEDERAL FINANCE

On the monetary system of Switzerland three valuable works are K. Blaum, "Das Geldwesen der Schweiz seit 1798," Strassburg, 1908; G. Paillard, "La Suisse et l'Union monétaire latine," Paris, 1909; and L. Coraggioni, "Münzgeschichte der Schweiz," Geneva, 1896. The last named is well illustrated, and is the accepted authority on Swiss numismatics.

The following works discuss Swiss banking: O. Bouchmil, "Origines et création de la Banque Nationale Suisse," Montpellier, 1906; and N. Droz, "La politique fédérale en matière de banques, d'assurances, et de chemins de fer," La Chaux de Fonds, 1896.

Swiss commercial politics are discussed by E. Frey, "Die schweizerische Handelspolitik der letzten Jahrzehnte," Leipsic, 1892; and T. Geering, "Die Handelspolitik der Schweiz im Ausgang des 19. Jahrhunderts," Berlin, 1902. In his "Schweizerische Volkswirtschaft und die Bundesfinanzen," Basel, 1916, H. Gautschy presents an extreme high-protectionist argument.

A thoroughgoing discussion of Swiss federal



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finances by an acknowledged authority is to be found in J. Steiger's "Der Finanzhaushalt der Schweiz," Bern, 3 vols., 1916. An extended historical discussion of Swiss taxes is presented by G. Schanz, "Die Steuern der Schweiz in ihrer Entwicklung seit Beginn des 19. Jahrhunderts," Stuttgart, 5 vols., 1890. The most valuable annual publication in this field is the "Schweizerisches Finanzjahrbuch," edited at Bern by J. Steiger.

### IX. COMMUNICATION AND TRANSPORTATION: NATIONAL OWNERSHIP AND OPERATION OF RAILWAYS

An extended study of Swiss railroads has been begun by P. Weissenbach, "Das Eisenbahnwesen der Schweiz," of which the first part, dealing with the history of the railroad system, was published at Zürich in 1913. Other references of value are H. Haguët, "Le Rachat des chemins de fer suisses et ses conséquences," Paris, 1902; Herold, "Der schweizerische Bund und das Eisenbahnwesen bis zur Jahrhundertwende," Stuttgart and Berlin, 1902; G. Keller, "Der Staatsbahngedanke bei den verschiedenen Völkern," Bern, 1897; E. Milhaud, "Le Rachat des chemins de fer," Paris, 1904; Oetiker, "Die Eisenbahngesetzgebung des Bundes," Bern, 2d ed., 1913; Raynaud, "Nationalisation des chemins de fer suisses," Paris, 1901; Streuli,

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### *Water Power, Electricity, and Post Office*

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## XI. THE SWISS ARMY SYSTEM

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